

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

Southwestern Bell Telephone	)	
Company	)	
	)	Transmittal No. 2580
Tariff F.C.C. No. 73	)	
	)	

**ORDER**

Adopted: December 5, 1996

Released: December 6, 1996

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

1. On October 9, 1996, Southwestern Bell Telephone Company (SWBT) filed Transmittal No. 2580 to add an additional location to an existing Individual Case Basis (ICB) for AT&T Communications with a dedicated OC48 SONET ring crossing state boundaries in the Kansas City, Missouri/Kansas LATA. 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. 2580.<sup>1</sup> On October 24, 1996, MCI Telecommunications Corporation (MCI) filed a petition to reject or, alternatively, to suspend and investigate Transmittal No. 2580. On November 4, 1996, SWBT filed a response to MCI's petition.

2. In Transmittal No. 2580, SWBT proposes to provide an additional node to the dedicated non-shared protected private network, OC48 SONET ring, with customer controlled performance monitoring capabilities of the end user location nodes, crossing state boundaries in the market area of Kansas City, Missouri and Kansas City, Kansas. This ring is provided with the ICB 96-IKC-50757.<sup>2</sup>

3. In its request for confidential treatment of the cost support data, SWBT states that the documents in question contain confidential information on total installed costs, depreciation, cost of money, income taxes, maintenance, administrative costs, ad valorem and overheads.<sup>3</sup> SWBT maintains that disclosure of such confidential financial information could substantially

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<sup>1</sup> Letter from Paul Walters, Counsel for SWBT to Acting Secretary, FCC, dated October 9, 1996 (*Oct. 9, 1996 Letter*).

<sup>2</sup> SWB Transmittal No. 2580, Description and Justification (D&J) at 1-1.

<sup>3</sup> *Oct. 9 Letter* at 1.

harm the competitive 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.<sup>4</sup> 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.<sup>5</sup>

4. In its petition, MCI argues that the ICB rates filed under Transmittal No. 2580 should be rejected because SWBT is proposing to offer one of its customers ICB prices for a service that does not meet the Commission's criteria for ICB pricing. Specifically, MCI contends that SWBT fails to demonstrate that the SONET service it proposes to offer is not "like" any offering in SWBT's tariff. In addition, MCI maintains that the Commission should reject Transmittal No. 2580 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, by filing its cost support under confidential cover.<sup>6</sup> Moreover, MCI maintains that SWBT does not make a persuasive showing that it faces sufficient competition for the ICB service being offered in Transmittal No. 2580.<sup>7</sup>

5. In response, SWBT states that Transmittal No. 2580 was made simply to modify an existing ICB service for AT&T by adding an additional node to a dedicated, protected OC48 SONET ring. The cost data filed with Transmittal No. 2580 is identical to that filed in Transmittal No. 2564 for the original ICB, except of course for dollar amounts. SWB also contends that the cost support data should be granted confidential treatment because it is the same data as the data filed in support of SWB's Transmittal No. 2564 and that data was granted confidential treatment.<sup>8</sup>

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. 2580 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).

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<sup>4</sup> *Id* at 2.

<sup>5</sup> *Id* at 7.

<sup>6</sup> MCI Petition at 2-3.

<sup>7</sup> *Id.* at 5-11.

<sup>8</sup> *See*, SWB Transmittal No. 2564, DA 96-1709 (Com.Car.Bur. rel. Oct. 15, 1996).


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 that cost support data filed with Transmittal No. 2580 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. As a result, the Transmittal No. 2580 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. 2580 filed by MCI Telecommunications Corporation IS DENIED.

## FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>9</sup> 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).