

**BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA**

**APPLICANTS: HONORABLE SODY CLEMENTS,** )  
**an Individual and Oklahoma Resident on behalf of** )  
**herself and others similarly situated; LT. GENERAL** )  
**(Ret.) RICHARD A. BURPEE, an Individual and** )  
**Oklahoma Resident on behalf of himself and others** )  
**similarly situated; JAMES PROCTOR, an Individual and** )  
**Kansas Resident on behalf of himself and others** )  
**similarly situated; RODD A. MOESEL, an Individual and** )  
**Oklahoma Resident on behalf of himself and others** )  
**similarly situated; RAY H. POTTS, an Individual and** )  
**Oklahoma Resident on behalf of himself and others** )  
**similarly situated; BOB A. RICKS, an Individual and** )  
**Oklahoma Resident on behalf of himself and others** )  
**similarly situated.** )  
  
**RELIEF SOUGHT: VACATE OR MODIFY OKLAHOMA** )  
**CORPORATION COMMISSION ORDER NO. 341630** )  
**CAUSE NO. PUD 260; AND REDETERMINE ISSUES** )  
**FOLLOWING INTRINSIC FRAUD** )

**CAUSE PUD NO.**  
**201 500344**

**FILED**  
 SEP 14 2015  
 COURT CLERK'S OFFICE - OKC  
 CORPORATICN COMMISSION  
 OF OKLAHOMA

**APPLICATION TO VACATE OR MODIFY  
ORDER 341630 AND REDETERMINE ISSUES**

This Application seeks to redress the proven bribery and corruption perpetrated by Southwestern Bell Telephone Company ("SBTC") that occurred in 1989 in relation to Oklahoma Corporation Commission's ("OCC" or "Commission") Cause No. PUD (Public Utility Docket) 860000260 ("PUD 260"). This Application is filed pursuant to OAC 165:5-17-2, a rule which allows the filing of an Application by "...any person, whether or not a party of record in the original cause." By this filing, the Applicants herein present the needed evidence and legal basis required to remedy the intrinsic fraud utilized by SBTC to obtain ill-begotten orders and judgments from the Commission.

**I. Parties:**

**a. Applicants:**

Honorable Sody Clements  
 c/o Russell J. Walker  
 511 Couch Dr., 3rd Fl  
 Oklahoma City, OK 73102

Lt. General (Ret.) Richard A. Burpee  
 c/o Russell J. Walker  
 511 Couch Dr., 3rd Fl  
 Oklahoma City, OK 73102

James Proctor  
 c/o Russell J. Walker  
 511 Couch Dr., 3rd Fl  
 Oklahoma City, OK 73102

Rodd A. Moesell  
 c/o Russell J. Walker  
 511 Couch Dr., 3rd Fl  
 Oklahoma City, OK 73102

Ray H. Potts  
 c/o Russell J. Walker  
 511 Couch Dr., 3rd Fl  
 Oklahoma City, OK 73102

Bob A. Ricks  
 c/o Russell J. Walker  
 511 Couch Dr., 3rd Fl  
 Oklahoma City, OK 73102

2015-09-14 11:30 AM  
 RECEIVED 10/20/2015  
 DATE: 09/14/2015 TIME: 11:30 AM  
 CASE: 201500344 PUD - CIVILIAN - OKA  
 PARTY: SODY CLEMENTS  
 CHECK: 51048  
 71 01126565/TENN/4100 JK

b. Applicants' Attorneys:

Russell J. Walker, OBA 9293  
Andrew J. Waldron, OBA 17362  
511 Couch Dr., 3rd Fl  
Oklahoma City, OK 73102

c. Respondents:

AT&T, Inc.,  
ATTN: General Counsel  
208 S. Akard St  
Dallas TX, 75202

American Association of Retired Persons  
ATTN: General Counsel  
601 E. Street NW  
Washington DC, 20049

SWBT, Inc.  
ATTN: General Counsel  
208 S. Akard St  
Dallas TX, 75202

INCOG (Indian Nations Council of  
Governments)  
2 West 2<sup>nd</sup> Street  
Tulsa, OK 74103

State of Oklahoma *ex rel* Oklahoma  
Corporation Commission  
ATTN: E. Scott Pruitt, Oklahoma  
Attorney General  
313 N.E. 21<sup>st</sup> St  
Oklahoma City, OK 73105

City of Oklahoma City  
ATTN: Office of Municipal Counselors  
200 N. Walker, Rm 309  
Oklahoma City, OK 73102

State of Oklahoma *ex rel* Oklahoma  
Corporation Commission  
ATTN: OCC Office of General Counsel  
2101 N. Lincoln Blvd,  
Oklahoma City, OK 73105

Oklahoma Rural Telephone Coalition  
c/o Ron Comingdeer  
6011 N. Robinson  
Oklahoma City, OK 73118

MCI Telecommunications Corp.  
ATTN: General Counsel  
22001 Loudoun County Parkway  
Ashburn, VA 20147

Southwestern Bell Yellow Pages, Inc.  
c/o The Corporation Company  
1833 S. Morgan Rd.  
Oklahoma City, OK 73128

AT&T Communications of the Southwest, Inc.  
c/o The Corporation Company  
1833 S. Morgan Rd.  
Oklahoma City, OK 73128

Thomas A. Jernigan, Esq., Staff Attorney  
Federal Executive Agencies (FEA)  
Utility Law Field Support Center (ULFSC)  
139 Barnes Drive, Suite 1  
Tyndall Air Force Base, Florida 32403  
Telephone: (850) 283-6663  
Thomas.Jernigan3@us.af.mil

John C. Degnan, Lt. Col., USAF  
Juan J. Godinez, Capt., USAF  
Toribio A. Garcia, TSgt., USAF  
Federal Executive Agencies (FEA)  
NCOIC, Utility Law Field Support Center  
AFLOA/JACE-ULFSC  
Tyndall AFB, Florida 32403-5317  
Telephone: (850) 283-6348  
Torbio.Garcia@us.af.mil

Rick D. Chamberlain, Esq.  
Wal-Mart Stores East, LP, and Sam's East, Inc.  
6 N.E. 63<sup>rd</sup> Street, Suite 400  
Oklahoma City, Oklahoma 73105  
Telephone: (405) 848-1014  
rchamberlain@okenergylaw.com

James Bradford Ramsey, Esq., General Counsel  
National Association of Regulatory Utility Commissions  
1101 Vermont Avenue, N.W., Suite 200  
Washington, D.C. 20005  
Telephone: (202) 898-1892  
jramsay@naruc.org

Deborah R. Thompson, Esq.  
OK Energy Firm, PLLC  
Post Office Box 54632  
Oklahoma City, Oklahoma 73154  
Telephone: (405) 445-3707  
dthompson@okenergyfirm.com  
Attorney for American Association of Retired People

Brandy Wreath, Esq., Director  
Public Utilities Division  
Oklahoma Corporation Commission  
Post Office Box 52000  
Oklahoma City, Oklahoma 73152-2000  
B.Wreath@occcemail.com

Jerry J. Sanger, Esq., Assistant Attorney General  
313 Northeast 21<sup>st</sup> Street  
Oklahoma City, Oklahoma 73105  
Jerry.Sanger@oag.ok.gov

Natasha M. Scott, Esq., Deputy General Counsel  
Public Utilities Division  
Oklahoma Corporation Commission  
Post Office Box 52000  
Oklahoma City, Oklahoma 73152-2000  
N.Scott@occcemail.com

Robert D. Allen, Esq.  
8101 Glenwood Avenue  
Oklahoma City, Oklahoma 73114

II. Facts:

*Summary of the Facts*

While the criminal misconduct of SBTC attorney, William L. Anderson, and Commissioner Robert E. Hopkins was fully adjudicated and determined in the criminal trial brought in the United States District Court for the Western District of Oklahoma, CR-93-137-A, wherein both Commissioner Hopkins and Attorney Anderson were found guilty by a jury of Accepting Money to Influence a Vote and Bribery, respectively, in violation of 18 USC §666 (a), no judgment has ever been entered finding that the “bribed” Commission Order, Order No. 341630 entered in PUD 260 on September 20, 1989, is unconstitutional for the reason that excluding the bribed vote of Commissioner Hopkins, the Order lacks the approval of a majority of the OCC Commissioners as is required by the Oklahoma Constitution. *See* Oklahoma Constitution, Article IX, Section 18(a)B (“...[T]he concurrence of the majority of said Commission shall be necessary to decide any question”). Oklahoma law is clear, however, that “bribed” votes do not count and that where the minimum number of votes required by the Constitution is not present due to bribery, then no lawful or constitutionally proper resolution was ever entered. *See Oklahoma Company v. O’Neil*, 1967 OK 105, ¶0, 9, 13-14, ¶17-24, 431 P.2d 445 (Okla. 1967); *Marshall v. Amos*, 1968 OK 86, ¶22-32, ¶33-36; 442 P.2d 500 (Okla. 1968); *Johnson v. Johnson*, 1967 OK 16, ¶14, 20, ¶31, ¶33, and Special Concurring Opinion, ¶3-5. Indeed, bribery of public officials by a corporation doing business in the state is expressly prohibited by the Oklahoma Constitution. *See* Oklahoma Constitution, Article 9, Section 40.

The simple fact is that no valid and untainted Order has ever been entered either ultimately: (1) deciding the Commission’s PUD 260 matter or (2) enforcing the parties’ agreed “Stipulation between Staff and Southwestern Bell Telephone Company” (“PUD 260 Stipulation”) that was adopted by the OCC on June 23, 1987 by the Commission’s Order No. 313853.<sup>1</sup> Although the underlying Commission Order was affirmed, in

---

<sup>1</sup> In *O’Neil*, ¶13, the Oklahoma Supreme Court expressly held that any “vote” resulting from bribery was “**null and void and of no force and effect.**” In *Amos*, ¶24, the Court clarified that bribery did not render a decision

part, on appeal to the Oklahoma Supreme Court (an appeal decided without knowledge of the bribery), such decision adds nothing to the Order's validity. See *Johnson*, ¶31, 33; *Amos*, ¶34-36; *O'Neil*, ¶ 22-24.<sup>2</sup> Finally, although some of the issues of this Application were previously presented to the Oklahoma Supreme Court (by means of Application to Assume Original Jurisdiction), the Court without explanation declined to assume original jurisdiction. SBTC and others have previously argued that only the OCC has jurisdiction to hear matters of intrinsic fraud in the first instance, and such may very well have been the basis of the Oklahoma Supreme Court's decision to deny Applicants' request for relief.

*Facts in Support of Application*

1. Applicant, Honorable Sody Clements is an individual and resident of Oklahoma County, Oklahoma. She is the current Mayor of the City of Nichols Hills and has lived in the State of Oklahoma since 1957. Mrs. Clements has been a long-time community leader and volunteer and has served in leadership or Board positions with numerous churches, schools and civic organizations. Since prior to 1985, Mrs. Clements has had telephone service with AT&T, Inc. (or its predecessors/subsidiaries) and has been a customer of its fixed line telephone services.

2. Applicant, Lieutenant General (USAF Ret.) Richard Burpee is an individual and resident of Oklahoma County, Oklahoma. In his career, General Burpee was the Commander of the Oklahoma City Air Logistics Center, Tinker Air Force Base from August 1983 to January 1986. Prior to his retirement from the United States Air Force in February 1990, General Burpee was the Commander of the 15<sup>th</sup> Air Force, responsible for Strategic Air Command operations in the Western United States, Alaska and the Pacific, with responsibility for more than half of the nation's intercontinental ballistic missile forces. He is a member of the Oklahoma Military Hall of Fame, a veteran combat pilot decorated for gallantry and has served as a Director to numerous banks, hospitals, schools and charitable foundations. After retirement from the United States Air Force, General Burpee has resided in Oklahoma City, Oklahoma and since 1991 has had telephone service with AT&T, Inc. (or its predecessors/subsidiaries) and has been a customer of its fixed line telephone services.

3. Applicant, Mr. James Proctor is an individual and former resident of Oklahoma County, Oklahoma. Mr. Proctor has over thirty years of experience in utility regulation matters, including experience in regulating public utility companies for two state utility commissions and as a regulatory consultant to state regulatory agencies; and, as a consultant to regulated utilities and utility subsidiaries, affiliates and

---

"absolutely void" in a "legal sense," as it was also an established rule that the rights of innocent third parties would be protected for those who may have acted in reliance upon the legitimacy of the decision fair on its face. Such is not a concern in the present case. Here, the only party who could be negatively affected by the vacating of the invalid Order *would be SBTC, which clearly is not an innocent party.* Oklahoma ratepayers could only be benefitted by the redetermination of the amount of "Excess Revenues" that should be "refunded" to them in accord with the PUD 260 Stipulation.

<sup>2</sup> The Oklahoma Supreme Court has repeatedly held that a void judgment, affirmed on appeal, is still **void** and may be vacated at any time; the fact that a void judgment has been appealed to the Supreme Court *and affirmed* on appeal, adds nothing to the purported judgment. See *Latimer v. Vanderslice*, 1936 OK 554, ¶0, 8-12.

partnerships. From 1987 through 1990, Mr. Proctor served as the Chief of Accounting and Financial Analysis of the Utilities Division, Kansas Corporation Commission. From 1990 to 1993, Mr. Proctor served as the Director of the Public Utility Division, Oklahoma Corporation Commission. In the States of Kansas and Oklahoma, Mr. Proctor was substantially involved in evaluating and determining the effect of the United States Tax Reform Act of 1986 on the regulated earnings of Kansas and Oklahoma utilities, and, then making recommendations to the respective State utility regulatory agencies as to adjusting for such effect on utility rates and making refunds of excessive revenues.

Because of Mr. Proctor's role and involvement in the regulatory matters before the Oklahoma Corporation Commission ("Commission" or "OCC"), he has extensive knowledge of events, circumstances, details and complexities of the Causes No. PUD 860000260 ("PUD 260") and No. PUD 890000662 ("PUD 662") which pertain to Southwestern Bell Telephone Company ("SBTC") rates. Mr. Proctor was directly involved in such matters. As Director of the Commission's Public Utility Division, Mr. Proctor was the person most responsible for preparing testimony on policy and significant regulatory issues, directing and supervising the preparation of Public Utility Division Staff testimony, the preparation of legal briefs, advising the Commissioners in their deliberative process, preparing proposed findings, conclusions and proposed orders and preparing Commission Orders in relation to PUD 260 and PUD 662 including the Oklahoma Supreme Court's decision and remand to the OCC of case no. 74,194 (the PUD 260 matter) filed December 24, 1991 and the Final Commission Order, Order No. 367868, in PUD 662 filed August 26, 1992. Mr. Proctor during the period 1990 through 1993 had telephone service with AT&T, Inc. (or its predecessors/subsidiaries) and was a customer of its fixed line telephone services.

4. Applicant, Rodd A. Moesel is an individual and resident of Oklahoma County, Oklahoma. Mr. Moesel is the President and co-owner of American Plant Products & Services, Inc., a company located in Oklahoma City, Oklahoma. He is also a member of the Oklahoma Agriculture Hall of Fame and was the 2014 recipient of the Governor's Outstanding Achievement Award in Agriculture. Mr. Moesel has served in top leadership roles for organizations such as the Oklahoma Farm Bureau, Oklahoma Greenhouse Growers Association, North American Horticulture Supply Association and Oklahoma 4-H Foundation, to name a few. He currently serves as one of two representatives on the national Counsel for Agricultural Research, Extension and Teaching (CARET). For all relevant time periods, Mr. Moesel has had telephone service with AT&T, Inc. (or its predecessors/subsidiaries) and has been a customer of its fixed line telephone services.

5. Applicant, Ray H. Potts is an individual and resident of Oklahoma County, Oklahoma and is the President of Potts Exploration, LLC, a company located in Oklahoma City, Oklahoma. Mr. Potts has over forty-five years of experience in the Oklahoma Oil & Gas industry after earning a masters degree in geology from the University of Missouri in 1959. He was a co-founder of PSEC, Inc., a company sold to ONEOK Resources Company in 1997. While working as a geologist for Pure Oil Company, Mr. Potts attended law school at nights and became a member of the Oklahoma Bar in 1965. Mr. Potts has served as the President and on the Board of Directors for the Oklahoma Independent Petroleum Association and as past Presidents and/or Directors to numerous trade associations, banks, and many not-for-profit groups to include the Oklahoma City Philharmonic, Presbyterian Health Foundation, Downtown YMCA, Allied Arts, Economic Club of Oklahoma and Fortune Club of Oklahoma City. For all relevant time periods, Mr. Potts has had telephone service with AT&T, Inc. (or its predecessors/subsidiaries) and has been a customer of its fixed line telephone services.

6. Applicant, Bob A. Ricks is an individual and resident of Oklahoma County, Oklahoma. After earning his law degree from Baylor University in 1969, Mr. Ricks served twenty-six years in Federal law

enforcement rising to the position of Special Agent in Charge of the FBI in the State of Oklahoma. Mr. Ricks also served as chairman for the Oklahoma Federal Executive Board which has oversight responsibilities for all Federal agencies in the State of Oklahoma. Bob Ricks was appointed Oklahoma Commissioner of Public Safety by Governor Frank Keating and served in that position from 1996 to 2003. For all relevant time periods, Mr. Ricks has had telephone service with AT&T, Inc. (or its predecessors/subsidiaries) and has been a customer of its fixed line telephone services.

7. Following the break-up of AT&T into seven Regional Bell Operating Companies [per the decision in the antitrust lawsuit *U.S. v. AT&T*, 552 F. Supp. 131 (D. DC 1982)], on January 1, 1984, Southwestern Bell Telephone Company was spun off into Southwestern Bell Corporation. In 1995, Southwestern Bell Corporation changed its name to SBC Communications, Inc. In 2005, SBC Communications, Inc., purchased its former parent company, AT&T Corp., and merged itself into a new entity named AT&T, Inc. AT&T, Inc., is ranked as one of the twelve largest corporations in the United States and is one of the twenty-five largest companies in the world with gross revenues in excess of 132 billion dollars annually and global assets worth in excess of 292 billion dollars. AT&T, Inc. is the largest provider of fixed telecommunication services in the United States and the second largest provider of mobile telephone service. AT&T, Inc., is incorporated in the State of Delaware and has its headquarters in Dallas, Texas.

8. On December 30, 2001, the original Southwestern Bell Telephone Company (the Operating Company), which was incorporated in the State of Missouri, merged into Southwestern Bell Texas, Inc., a Texas Corporation, which then converted itself into a limited partnership named Southwestern Bell Telephone, L.P., a Texas Limited Partnership. On June 29, 2007, Southwestern Bell Telephone, L.P., merged into SWBT, Inc., a Missouri corporation and thereafter took the formerly dormant name Southwestern Bell Telephone Company. SWBT, Inc. is wholly owned by AT&T, Inc., and does business under the names AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma, AT&T Texas, and collectively does business as AT&T Southwest.

9. The State of Oklahoma, by and through the Attorney General's Office; the Commission by and through its General Counsel; MCI Telecommunications Corporation; American Association of Retired Persons; INCOG (Indian Nations Council of Governments), City of Oklahoma City, AT&T Communications of the Southwest, Inc.; Oklahoma Rural Telephone Coalition, United States Federal Government Agencies (to include the U.S. Air Force) and Southwestern Bell Yellow Pages, Inc. were all parties who entered their appearance in relation to OCC's PUD 260, Order No. 341630, filed on September 20, 1989. Such entities may be interested parties to these proceedings.

10. This matter concerns the legacy misconduct of Southwestern Bell Telephone Company, occurring in 1989 and thereafter in bribing an OCC Commissioner Robert E. "Bob" Hopkins in relation to a rate matter and application known as Cause No. PUD 260. The misconduct of SBTC attorney, William L. Anderson, and Commissioner Hopkins was fully adjudicated and determined in the criminal trial brought in the United States District Court for the Western District of Oklahoma, CR-93-137-A, wherein both Commissioner Hopkins and SBTC's attorney Anderson, were found guilty by a jury (beyond a reasonable doubt) of Accepting Money to Influence a Vote and Bribery, respectively, in violation of 18 USC §666 (a). *See* Certified copies of the Judgments entered in CR-93-137-A, Exhibit "1."<sup>3</sup>

---

<sup>3</sup> The Superseding Indictment filed on July 7, 1994, asserted, *inter alia*, that on or about September, 1989, Robert E. Hopkins "knowingly and corruptly agreed to accept something of value, intending to be influenced

11. The criminal conviction of Robert E. Hopkins (Note: William Anderson never appealed his conviction) was affirmed by the Tenth Circuit in its Order and Judgment filed February 14, 1996, (Case No. 95-6120), wherein the Court wrote, in part, "*The 1991 tapes, properly admitted under Fed. R. Evid. 801(d) 2(E), detailed efforts to conceal the payoffs from the FBI. From those tapes [tapes of the FBI's Title III wire taps], the jury heard recorded conversations among Hopkins, Anderson, Murphy and other Southwestern Bell executives plotting their "story" in the event federal agents questioned them.*"<sup>4</sup> (Emphasis added.) See Tenth Circuit Court of Appeals Order and Judgment filed February 14, 1996, Exhibit "4."

12. In the 1980s, telephone rates and telephone company earnings were regulated to ensure that only fair rates were imposed, because left unregulated, charges for telecommunication services might be unfair due to lack of competition and the existence of monopoly power. The OCC is the governmental agency with jurisdiction to determine such matters pursuant to the Oklahoma Constitution and statutes. See Oklahoma Constitution, Article IX and 17 O.S. §131 *et seq.* PUD 260 was an Application brought by the Public Utility Division of the Commission on October 23, 1986, to determine the effect of the newly enacted (United States) Tax Reform Act of 1986 on Oklahoma utilities. Specifically, because the federal government had reduced the corporate federal income tax rate from 46% to 34%, effective July 1, 1987, such resulted in an annual "windfall" in earnings to SBTC under the existing rates and generated "excess revenues" which the Commission could have ordered be refunded to Oklahoma consumers such as the Petitioners. Motivating its wrongdoing, SBTC wished to keep for itself these "excess revenues" which later were found to amount to over \$100,000,000 per year.<sup>5</sup>

---

or rewarded in connection with the business of the Oklahoma Corporation Commission; that is, [he] agreed to accept money offered to influence or reward his vote on PUD 260, permitting Southwestern Bell Telephone Company to reinvest approximately \$30,000,000 rather than reimburse that amount to Oklahoma rate-payers." See Superseding Indictment filed on July 7, 1994, attached hereto as Exhibit "2."

<sup>4</sup> On February 21, 1989, SBTC attempted to bribe Commissioner Robert Anthony, who immediately informed the FBI. Over the course of several years, Commissioner Anthony worked with the FBI to expose the criminal wrongdoing. A copy of the actual money which SBTC's then President Royce S. Cadwell, then Vice-President David Miller, then in-house counsel Glen A. Glass and outside counsel William Anderson gave to Commissioner Anthony in a felonious effort to bribe him (which was turned over to the FBI), is Exhibit "3." Judge William S. Myers, Jr., the Special Master who was appointed by the Oklahoma Supreme Court to investigate certain issues (Okla. Sup. Ct. Case No. 80,333), determined in his report filed October 5, 1993, that the payments made by SBTC to Commissioner Anthony were, "...no more or no less than an effort to have him look with favor on their pending rate matters."

<sup>5</sup> On August 26, 1992, after extensive discovery, 37 days of witness testimony and lengthy hearings, the Commission unanimously approved its rate making Order in Cause No. PUD 662, Order No. 367868, which established SBTC's annual revenue excess to be more than \$100,000,000 based upon the actual data (not estimated data) for the complete test year 1989. See Cause No. PUD 662, Order No. 367868, attached hereto as Exhibit "5." Applying the annual revenue excess as determined by the valid (unanimous) Commission Order No. 367868, the approved 11.589% compounded annual interest rate as established in Commission Order No. 342343, the Petitioners' experts have determined that the citizens of Oklahoma are due the total sum of nearly **16.1 billion dollars**, that is, precisely \$15,850,594,337 as of September 30, 2015. See Commission Order No. 342343, attached as Exhibit "6," and Affidavit of James Proctor, attached as Exhibit "7." Such amounts to an average of about \$17,000 for each Oklahoma telephone number.



13. The details of SBTC's wrongdoing, as set forth in the Trial Brief of the United States filed on November 3, 1994, were that a conspiracy between Anderson and others began at an Applewood's Restaurant in the early part of September, 1989. *See* Trial Brief of United States of America, Exhibit "8." The plan involved enlisting a third party to approach and influence Commissioner Hopkins in connection with his vote on PUD 260 [specifically, Commission Order No. 341630]. *Id.* In furtherance of that conspiracy, Anderson called Michael R. Murphy and asked him to approach Hopkins and offer him \$10,000 if the Commissioner voted for the position advanced by Anderson. *Id.* Murphy also received a call from Jewel Callahan, who told Murphy that he had \$5,000 more for Hopkins in the event of such a vote. Murphy agreed to act as the "go-between" or "bagman" between Anderson/Callahan and Commissioner Hopkins. *Id.* Within days, Murphy contacted Hopkins and advised that Anderson and Callahan have \$15,000 that he and Hopkins could "split" if Hopkins would vote for "reinvestment" in the PUD 260 case. *Id.* On or about September 18, 1989, Hopkins accepted the money in exchange for his vote in PUD 260, Order No. 341630, which occurred on September 20, 1989. *Id.* The vote was two votes in favor (including Hopkins' bribed vote), and one vote against. Excluding Hopkins bribed vote, the vote on the Order was one in favor and one against, a vote which lacks approval from a majority and renders the ultimate Order unconstitutional, invalid and void (except as relied upon by innocent third parties). *See* PUD 260, Order No. 341630, Exhibit "9."<sup>6</sup>

14. Applicants bring this action, on behalf of themselves and all those similarly situated, seeking a redetermination that the Commission's Order entered in PUD 260, Order No. 341630 (Entered September 20, 1989), for the reason that, excluding the bribed vote of Commissioner Hopkins, the Order lacks the approval of a majority of the OCC Commissioners as is required by the Oklahoma Constitution. *See* Oklahoma Constitution, Article IX, Section 18(a)B. This relief and determination is proper per *Oklahoma Company v. O'Neil*, 1967 OK 105, ¶0, 9, 13-14, **17-24**; *Marshall v. Amos*, 1968 OK 86, ¶22-36; *Johnson v. Johnson*, 1967 OK 16, ¶14, 20, **31, 33**, and Special Concurring Opinion, ¶3-5.

15. The Applicants clearly have "standing" because they have a legally protected interest which was injured, in fact, by the invalid (bribed) Commission Order. Specifically, during the relevant period, the Applicants had fixed line phone service with Southwestern Bell Telephone Company, a state regulated monopoly. *See* Paragraphs 1-6, *Supra* During the relevant period, Oklahoma laws and regulations limited SBTC's "return on investment" and the Applicants as SBTC customers would most probably be entitled to a refund on SBTC's "excess revenues," which were later calculated as exceeding \$100,000,000 per year. As is shown in the Affidavit of James Proctor (Exhibit "7"), substantial evidence exists that SBTC's "excess revenues" were grossly understated in the bribed OCC's PUD 260 Order (by more than \$90 million **per year**). That the PUD 260 matter remained unresolved even after the PUD 662 settlement further evidences that "excess revenues" (totaling hundreds of millions of dollars) would have most certainly been "refunded." This Application is filed pursuant to OAC 165:5-17-2, a rule which allows the filing of an Application by "*...any person, whether or not a party of record to in the original cause.*"

---

<sup>6</sup> Because of the extreme time constraints imposed by the Tax Reform Act of 1986 and the impossibility of examining rates prior to its effective date July 1, 1987, SBTC entered into a binding "stipulation" on June 23, 1987 which was accepted by the OCC in Order No. 313853, that, "*...if the Commission ultimately determines that a rate reduction is appropriate for [SBTC], that said reduction would be effective as of July 1, 1987, in order to allow the full benefits of the Tax Reform Act to accrue to [SBTC's] customers.*" *See* Exhibit "10." It is because of this stipulation and Order that SBTC owes customers the "excess revenues" as "ultimately determined" by the OCC, with interest, from July 1, 1987 to the present. By SBTC's own stipulation, such is not impermissible retroactive rate making.

16. It is also clear that a “causal nexus” exists between the bribery of Commissioner Hopkins and the approval of the Commission’s Order in PUD 260. Indeed, such was an element of the crime and had to be proven to the Oklahoma Jury, the federal district judge and the Tenth Circuit Court of Appeals to the “beyond a reasonable doubt” standard.

17. Finally, as established by the totality of the facts, the specific testimony of James Proctor and the law as set forth herein, it is a high likelihood and not “mere speculation” that upon the Commission’s (unbribed) determination of PUD 260 that Applicants’ injury of being denied a proper “refund” of SBTC’s excess revenues will be redressed by a favorable decision. *See* Affidavit of James Proctor, (Exhibit “7”). The result in the Commission’s PUD 662 case evidences that PUD 260 was not fairly, justly or reasonably determined for Oklahoma telephone ratepayers.<sup>7</sup> Any argument otherwise is false, unsupported, disingenuous, and most likely the result of politics at best and corruption at worst.<sup>8</sup> Moreover, the improper conduct of SBTC at issue herein was expressly unconstitutional. *See* Oklahoma Constitution, Article 9, Section 40.

III. Legal Authority:

Oklahoma Constitution, Article 9, (including Sections 18 and 40); OAC 165:5-17-2; *State ex rel Robert Henry v. Southwestern Bell Telephone Co.*, 1991 OK 134; *Latimer v. Vanderslice*, 1936 OK 554, ¶ 0, 8-12; *Oklahoma Company v. O’Neil*, 1967 OK 105, ¶0, 9, 13-14, ¶17-24, 431 P.2d 445 (Okla. 1967); *Marshall v. Amos*, 1968 OK 86, ¶22-32, ¶33-36; 442 P.2d 500 (Okla. 1968); *Johnson v. Johnson*, 1967 OK 16, ¶14, 20, ¶31, ¶33, and Special Concurring Opinion, ¶3-5; 17 O.S. 1997 Sect. 139, *et seq*; 17 O.S. 1968 §177; 26 O.S. 1976 §15-110.

IV. Relief Requested:

*Relief Requested by Applicants*

Applicants request that the Commission vacate or modify its Order No. 341630 (subject to protecting the rights of innocent parties, if any), and that it reconsider certain of the issues which were determined therein. Order 341630 was entered in Cause No. PUD 260 on September 20, 1989. Specifically, the Applicants seek to vacate or modify Section III, Part K of the Order determining the “Excess Revenues” as being \$7,847,172 for 1989, and each year thereafter, and also, Section IV, setting forth the Commission’s determination on how the revenue excess should be used. The Order was obtained by means of intrinsic fraud, that being, the bribery of one of the Commissioners.

Applicants herein further assert that the Commission’s “unbribed” determination of the Excess Revenues for 1989 and each year thereafter should be based on the “complete test year” and “actual data” used

---

<sup>7</sup> Because “innocent” Oklahoma ratepayers cannot legally be made “worse off” by the (unbribed) determination of PUD 260 (*Amos*, ¶24), there is no danger or harm to the public in vacating or modifying the ill-gotten OCC Order for a lawful, valid and unbribed determination.

<sup>8</sup> Public sources indicate that even today, AT&T is the single largest corporate contributor in American politics.

in its own Order No. 367868, entered in Cause No. PUD 890000662 (“PUD 662”) on August 26, 1992 (a unanimous Commission determination entered after extensive discovery and based on 37 days of witness testimony and lengthy hearings). The Commission should also determine that a refund of the Excess Revenues to the ratepayers, albeit not legally required as per the Oklahoma Supreme Court’s Henry decision, is in this circumstance, appropriate, and should be ordered. Such a refund was expressly allowed (thus, not impermissible retroactive ratemaking) as per the parties’ “stipulation” that was adopted by the OCC on June 23, 1987.<sup>9</sup> A refund has been recognized as proper by other prior Commission Orders.<sup>10</sup>

WHEREFORE the Applicants pray that the Oklahoma Corporation Commission will grant them the following relief:

1. Grant the Application to Vacate or Modify its (“bribed”) Order entered in PUD 260, Order No. 341630, and to determine (without bribery) the matters raised by the PUD 260 application filed by the Public Utilities Division of the Oklahoma Corporation Commission on October 23, 1986, but in no event, to make a determination more adverse to innocent third parties than was provided for in the Order of September 20, 1989; and

2. Upon the ultimate determination of PUD 260 by the Oklahoma Corporation Commission, thereafter determine and award the Applicants and counsel such representation fees, attorneys’ fees, court costs, and for such other relief to which the Applicants are entitled under law or equity.

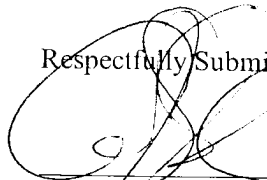
---

<sup>9</sup> Order No. 313853 orders “that if the Commission ultimately determines that a rate reduction is required for Respondent, Southwestern Bell Telephone Company, that said reduction shall be effective July 1, 1987.” Applicants assert to effectuate that “said reduction shall be effective July 1, 1987” requires Excess Revenues collected by SBTC subsequent to July 1, 1987 be refunded to its customers. Otherwise, said “rate reduction” shall not have been implemented as of July 1, 1987 as required by Order No. 313853.

<sup>10</sup> The Commission found in “Order Regarding Motions For Modification, Reconsideration And To Stay And Abate Order Number 341630” filed as Order No. 342343 on October 19, 1989 in PUD 260, that the PUD 260 Stipulation provides sufficient legal basis for refunding the Excess Revenues to the ratepayers. More specifically, the Commission found that “as pointed out in the brief of the Commission Staff, absent the stipulation [PUD 260 Stipulation], the Commission would be unable to order a refund because Southwestern Bell was charging their authorized tariffed rates at all times in question.”

HONORABLE SODY CLEMENTS, ET AL.  
CAUSE PUD NO. 2015 \_\_\_\_\_  
PAGE 12

Respectfully Submitted,



---

Russell J. Walker, OBA # 9293  
Andrew J. Waldron, OBA # 17362  
511 Couch Drive, Third Floor  
Oklahoma City, Oklahoma 73102  
Telephone: (405) 943-9693  
Facsimile: (405) 232-1108

**ATTORNEYS FOR APPLICANTS**

ATTORNEYS' LIEN CLAIMED

United States District Co  
Western District Of Oklahoma

RECEIVED  
DALLAS  
COMMUNITY CORRECTIONS  
OFFICE

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE  
For Offenses Committed on or After November 1, 1987

'95 APR 17 AM 10 13

WILLIAM L. ANDERSON  
UNITED STATES MARSHAL  
WESTERN DISTRICT OF OK

Case Number: CR-93-137-A

Rec'd USMS  
02/27/95

(Name of Defendant)

D. C. Thomas  
Defendant's Attorney

FILED

THE DEFENDANT: William L. Anderson

pleaded guilty to count(s) \_\_\_\_\_

was found guilty on count(s) two (2) of the Superseding Indictment  
plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC §§ 666(a)(2) and 2	Bribery	September, 1989	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_ and is discharged as to such count(s).

Count(s) 3 of the Superseding Indictment (is)(are) dismissed on the motion of the United States.

It is ordered that the defendant shall pay a special assessment of \$50.00, for count(s) Two of the Superseding Indictment, which shall be due  immediately  as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 446-18-3818

Defendant's Date of Birth: 08-14-19

Defendant's Mailing Address:

5809 N. Barnes

Oklahoma City OK 73112

February 24, 1995  
Date of Imposition of Sentence

Wayne Alley  
Signature of Judicial Officer

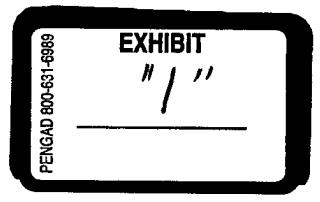
WAYNE E. ALLEY, U. S. DISTRICT JUDGE  
Name & Title of Judicial Officer

2/24/95  
Date

Defendant's Residence Address:  
Same as above

ATTEST: A true copy of the original  
Robert D. Dennis, Clerk

By Cristina [Signature]  
Deputy



Defendant: ANDERSON, WILLIAM  
Case Number: CR-93-137-A

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of thirty-three (33) months on Count 2 of the Superseding Indictment

**DOCKETED**

**FILED**

The court makes the following recommendations to the Bureau of Prisons:  
Federal Prison Camp, El Reno, Oklahoma

APR 18 1995  
ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
BY [Signature], DEPUTY

The defendant is remanded to the custody of the United States marshal.  
 The defendant shall surrender to the United States marshal for this district, at which time defendant's Court appearance bond will be exonerated.

at 9:00 A.M. on Tuesday, April 11, 1995.  
 as notified by the United States marshal.  
 The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,  
 before noon on \_\_\_\_\_  
 as notified by the United States marshal.  
 as notified by the probation office.

RETURN

I have executed this judgment as follows:

V/S on 4/11/95 12:00 PM  
[Signature]

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_

FMC Ft Worth with a certified copy of this judgment.

George E. Killinger  
~~United States Marshal~~ Warden

By Rawana Windham  
~~Deputy Marshal~~ L.I.E. 240

Defendant: ANDERSON, Will ;L.  
Case Number: CR-93-137-A

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years on Count 2 of the Superseding Indictment

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
- The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.
- The defendant shall not possess a firearm or destructive device.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptance reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: ANDERSON, Willi J.L.  
Case Number: CR-93-137-A

FINE

The defendant shall pay a fine of \$7,500.00.

This amount is the total of the fines imposed on individual counts, as follows:

The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

The interest requirement is waived.

The interest requirement is modified as follows:

This fine plus any interest required shall be paid:

in full immediately.

in full not later than \_\_\_\_\_.

in equal monthly installments over a period of \_\_\_\_\_ months. The first payment is due on the date of this judgment. subsequent payments are due monthly thereafter.

In installments according to the following schedule of payments:

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.



Defendant: ANDERSON, WILSON L.  
Case Number: CR-94-137-A

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

OR

The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 20

Criminal History Category: 1

Imprisonment Range: 33 to 41 months

Supervised Release Range: 2 to 3 years

Fine Range: \$7,500.00 to \$75,000.00

Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: \$                     

Full restitution is not ordered for the following reason(s):

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

upon motion of the government, as a result of defendant's substantial assistance.

for the following reason(s):

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

**FILED**  
DEC 13 1994

ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKLA.  
By \_\_\_\_\_ DEPUTY

UNITED STATES OF AMERICA

\*  
\*  
\*  
\*  
\*  
\*  
\*

V.

\* CRIMINAL NO. CR-93-137-A

WILLIAM ANDERSON  
ROBERT "BOB" HOPKINS

**ORDER**

Upon motion of the United States, it is ordered that Count 3  
of the Indictment is dismissed.

DATED this 13<sup>th</sup> day of Dec, 1994.

Certified Copy  
CR-93-137-A; 240



*Wayne E. Alley*  
WAYNE E. ALLEY  
United States District Judge

11:34 am, May 16, 2014  
Carmelita Reeder Shinn, Clerk

United States District Court  
Western District Of Oklahoma

**FILED**  
MAR 06 1995

UNITED STATES OF AMERICA  
V.  
ROBERT E. HOPKINS

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed on or After November 1, 1987)  
Case Number: CR-93-137-A

U.S. DISTRICT COURT, WESTERN DIST. OF OKLA.  
ROBERT E. HOPKINS (087)  
CLERK  
DEPUTY

(Name of Defendant)

Kenneth R. Nance  
Defendant's Attorney

THE DEFENDANT: Robert E. Hopkins

- pleaded guilty to count(s) \_\_\_\_\_
- was found guilty on count(s) One of the Superseding Indictment after a plea of not guilty.

**DOCKETED**

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC § 666(a)(1)	Accepting Money to Influence a Vote	September, 1989	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_ and is discharged as to such count(s).
- Count(s) 3 of the Superseding Indictment (is)(are) dismissed on the motion of the United States.
- It is ordered that the defendant shall pay a special assessment of \$50.00, for count(s) One of the Superseding Indictment, which shall be due  immediately  as follows:

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 441-26-1092

Defendant's Date of Birth: 02-03-29

Defendant's Mailing Address:

Rt 1, Box 116

Edmond OK 73003

Defendant's Residence Address:  
Same as above

March 3, 1995  
Date of Imposition of Sentence  
Wayne E. Alley  
Signature of Judicial Officer

WAYNE E. ALLEY, U. S. DISTRICT JUDGE  
Name & Title of Judicial Officer

3/6/95  
Date

238

Defendant: HOPKINS, Robert E  
Case Number: CR-93-137-A

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of thirty-three (33) months on Count 1 of the Superseding Indictment

The court makes the following recommendations to the Bureau of Prisons:

Federal Correctional Institution with access to training in heating and air conditioning, otherwise, Federal Prison Camp, El Reno, Oklahoma

The defendant is remanded to the custody of the United States marshal.

The defendant shall surrender to the United States marshal for this district, at which time defendant's Court appearance bond will be exonerated.

at 9:00 A.M. on Tuesday, April 18, 1995

as notified by the United States marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons,

before noon on \_\_\_\_\_

as notified by the United States marshal.

as notified by the probation office.

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_

Defendant: HOPKINS, Robert E  
Case Number: CR-93-137-A

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years on Count 1 of the Superseding Indictment

While on supervised release, the defendant shall not commit another federal, state, or local crime and shall not illegally possess a controlled substance. The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

- The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
- The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.
- The defendant shall not possess a firearm or destructive device.

**STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptance reasons;
- 6) the defendant shall notify the probation officer within 72 hours of any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

FINE

The defendant shall pay a fine of \$71,234.40. The fine includes any costs of incarceration and/or supervision.

This amount is the total of the fines imposed on individual counts, as follows:  
As to Count 1 of the Superseding Indictment:

\$ 7,500.00	Punitive Fine
57,222.00	Defray Cost of Incarceration
<u>6,512.40</u>	Defray Cost of Supervision
\$71,234.40	TOTAL

The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

- The interest requirement is waived.
- The interest requirement is modified as follows:

This fine plus any interest required shall be paid:

- in full immediately.
- in full not later than \_\_\_\_\_.
- in equal monthly installments over a period of \_\_\_\_\_ months. The first payment is due on the date of this judgment. subsequent payments are due monthly thereafter.
- in installments according to the following schedule of payments:

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: HOPKINS, Robert (
Case Number: CR-93-137-A

STATEMENT OF REASONS

[X] The court adopts the factual findings and guideline application in the presentence report.

OR

[ ] The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 20

Criminal History Category: I

Imprisonment Range: 33 to 41 months

Supervised Release Range: 2 to 3 years

Fine Range: \$7,500.00 to \$75,000.00

[ ] Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution: \$

[ ] Full restitution is not ordered for the following reason(s):

[X] The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

[ ] The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

OR

The sentence departs from the guideline range

[ ] upon motion of the government, as a result of defendant's substantial assistance.

[ ] for the following reason(s):

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, )  
 )  
 PLAINTIFF, )  
 )  
 vs. ) CR 93-00137-001-A  
 )  
 ROBERT E. "BOB" HOPKINS, )  
 )  
 DEFENDANT. )

FINDINGS

On July 7, 1994, a 3-count Superseding Indictment was returned charging Robert E. Hopkins and William L. Anderson. Count 1 charged Robert E. Hopkins with accepting money to influence his vote, in violation of 18 U.S.C. § 666(a)(1). Count 3 charged Robert E. Hopkins with a conspiracy to persuade other persons with intent to hinder, delay, and prevent the communication to a law enforcement officer of information relating to the commission or possible commission of a federal offense, in violation of 18 U.S.C. § 1512(b)(3).

On November 30, 1994, Robert E. Hopkins was convicted by jury of Count 1 of the Indictment. Count 3 was dismissed on December 13, 1994. On January 13, 1995, pursuant to Fed. R. Crim. P. 32(c)(3)(A), the presentence investigation report was disclosed to counsel for defendant. Thereafter, defendant filed written objections, and on February 24, 1995, an amended presentence report was prepared. One objection related to the inclusion of the events leading up to Hopkins' involvement in the offense and his vote on the reinvestment of funds. Counsel objected to the defendant being denied an adjustment for acceptance of responsibility and to the



adjustment for obstruction of justice. A final objection dealt with a pending civil suit.

At sentencing on March 3, 1995, counsel for the defendant stated that the probation officer had adequately summarized his objections to the report in the addendum, so he made no additional comments. In the first objection, counsel asserts that the facts in paragraphs 5, 6, 7, and 8 had no relation to the defendant or the crime of which he was convicted. The Court overruled the objection, stating that the information in these paragraphs does not inculcate the defendant in any misconduct, but provides background to the case. The Court ruled that there was nothing in these paragraphs which would aggravate the defendant's sentence.

Counsel requested that a sentence be added to paragraph 10 of the presentence report. The Court ruled that the following sentence shall be added to the end of paragraph 10, by interlineation, in all copies of the report: "Robert Hopkins voted for reinvestment on both occasions, although he did have the option of changing his vote."

Counsel objected to the defendant being denied an adjustment for acceptance of responsibility. Counsel believes the defendant is entitled to an adjustment for acceptance of responsibility because the jury found him guilty and he is willing to accept whatever punishment is imposed by the Court, although he disagrees with the verdict. The Court overruled the objection. The Court stated that the defendant's willingness to accept the punishment ordered by the Court differs from acceptance of

responsibility. Acceptance of responsibility implies acceptance almost at the outset that the transaction occurs.

Counsel objects to the adjustment for obstruction of justice. He asserts there was no testimony or other evidence relating to this except for Murphy's testimony that he interpreted the defendant's words as a veiled suggestion of what to tell the FBI. The Court overruled the objection. The defendant's testimony included a blanket denial of the receipt of money or a bribe from Mike Murphy. The fact that the jury disbelieved the defendant is inherent in the verdict. The Court finds on the basis of its own independent evaluation that the defendant's testimony that he never received money from Murphy is false, material, and not due to mistake, inadvertence, or failure of memory. The Court ruled in this regard not merely based on observation of the defendant's testimony but as a result of reflecting later on the case. The manner in which the defendant testified is inconsistent with a number of sources. Murphy's testimony was consistent with recorded telephone communications.

Counsel states that the amount of settlement in a pending civil suit is extremely speculative, and objects to the inclusion of this information. The Court ruled that this information will play no role in sentencing.

IT IS SO ORDERED THIS 6<sup>th</sup> day of March, 1995.

Certified Copy  
CR-93-137-A; 238



11:35 am, May 16, 2014  
Carmelita Reeder Shinn, Clerk

  
WAYNE E. ALLEY  
UNITED STATES DISTRICT JUDGE

**FILED**

JUL 7 1994

U.S. DISTRICT COURT, WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

WILLIAM L. ANDERSON, and  
ROBERT E. "BOB" ROBERTS,  
Defendants.

Case No. CR-93-137-A

Violation: 18 USC § 666(a)(1)  
18 USC § 666(a)(2)  
18 USC § 2  
18 USC § 371

**SUPERSEDING  
INDICTMENT**

The Federal Grand Jury charges:

**INTRODUCTION**

1. At all relevant times, ~~ROBERT E. "BOB" ROBERTS~~ was an agent of the state of Oklahoma in that he was a duly elected Commissioner of the Oklahoma Corporation Commission.
2. At all relevant times, the Oklahoma Corporation Commission had the authority to regulate certain public service corporations operating within the State of Oklahoma, and to issue orders regarding refunds or other dispositions of revenue excess in the event of overearning by a regulated public service corporation. The Oklahoma Corporation Commission received federal assistance in excess of \$10,000 during the 1989 calendar year.
3. At all relevant times, Southwestern Bell Telephone Company, was a corporation operating in the state of Oklahoma, and

*T.G. Stephen Jones - HUSN*

*T.G. Stephen Jones - HUSN*

PENGAD 800-631-6988  
**EXHIBIT**  
"2"

was a public utility corporation regulated by the Oklahoma Corporation Commission.

4. At all relevant times, WILLIAM L. ANDERSON was an Oklahoma attorney who represented Southwestern Bell Telephone Company in numerous matters before the Oklahoma Corporation Commission.

THE PUD 260 CASE

5. On or about October 23, 1986, an application was filed before the Oklahoma Corporation Commission to determine the effect of the 1986 (Federal) Tax Reform Act on certain regulated utilities, among them Southwestern Bell Telephone Company. This application was designated PUD (Public Utility Division) 260. WILLIAM L. ANDERSON appeared on behalf of Southwestern Bell Telephone Company in the PUD 260 case.

6. An audit of Southwestern Bell Telephone Company by Oklahoma Corporation Commission staff indicated overearnings of approximately \$30,000,000, including interest. The Oklahoma Corporation Commission then considered, as part of PUD 260, whether to order Southwestern Bell Telephone Company to refund the money directly to consumers or to order Southwestern Bell Telephone Company to "reinvest" the money by, among other things, eliminating multi-party phone lines and making central office equipment improvements.

COUNT 1

7. The Grand Jury realleges and incorporates by reference paragraphs 1 through 6 of this Superseding Indictment as though fully set forth herein.

In or about September 1989, in the Western District of Oklahoma, ROBERT E. "BOB" HOPKINS, the defendant herein, knowingly and corruptly agreed to accept something of value, intending to be influenced or rewarded in connection with the business of the Oklahoma Corporation Commission; that is, the defendant agreed to accept money offered to influence or reward his vote on PUD 260, permitting Southwestern Bell Telephone Company to reinvest approximately \$30,000,000 rather than reimburse that amount to Oklahoma rate-payers.

All in violation of Title 18, United States Code, Section 666(a)(1).

COUNT 2

8. The Grand Jury realleges and incorporates by reference paragraphs 1 through 6 of this superseding indictment, though fully set forth herein.

In or about September, 1989, in the Western District of Oklahoma and elsewhere, WILLIAM L. ANDERSON, the defendant herein, knowingly and corruptly offered something of value to Oklahoma Corporation Commissioner ROBERT E. "BOB" HOPKINS with the intent to influence or reward HOPKINS in connection with the business of the Oklahoma Corporation Commission; that is, the defendant offered HOPKINS money to influence his vote of PUD 260, permitting Southwestern Bell Telephone Company to reinvest approximately \$30,000,000 rather than reimburse that amount to Oklahoma rate payers.

All in violation of Title 18, United States Code, Section 666(a)(2) and Section 2.

THE CONSPIRACY

9. From on or about March 13, 1991, and continuing thereafter until on or about May 15, 1991, in the Western District of Oklahoma and elsewhere, WILLIAM L. ANDERSON and ROBERT E. "BOB" HOPKINS, defendants, knowingly and willfully conspired with each other to corruptly persuade other persons with intent to hinder, delay and prevent the communication to a law enforcement officer of information relating to the commission or possible commission of a federal offense, in violation of 18 U.S.C. § 1512(b)(3).

OBJECT OF THE CONSPIRACY

10. The object of the conspiracy was to prevent agents of the Federal Bureau of Investigation from learning the truth about the promise and delivery of money from WILLIAM L. ANDERSON to Oklahoma Corporation Commissioner ROBERT E. "BOB" HOPKINS in connection with his vote on Oklahoma Corporation Commissioner Cause No. PUD-260.

MEANS AND MANNER

11. The object of the conspiracy was to be effected by:
- a. Maintaining regular and constant telephone contact between the defendants and others who had information pertaining to a violation or possible violation of federal law;
  - b. Fabricating a story consistent with some facts known by the Federal Bureau of Investigation, but untruthful in certain significant aspects; and
  - c. Regularly and repeatedly reciting the "fabricated story" by the defendants during telephone conversations

OVERT ACTS

12. In furtherance of the conspiracy, and to effect the objects of the conspiracy, the following overt acts, among others, were committed in the Western District of Oklahoma and elsewhere:

a. On or about March 14, 1991, ANDERSON had a telephone conversation where he asked that a person be told to "not say much" if contacted by the FBI;

b. On or about March 14, 1991, ANDERSON had a telephone conversation with HOPKINS regarding what a person had told the FBI;

c. On or about March 14, 1991, ANDERSON had a telephone conversation regarding what people should say if contacted by the FBI;

d. On or about March 15, 1991, ANDERSON and HOPKINS had telephone conversations regarding potential contacts with the FBI and discussed what other persons had told the FBI and

e. On or about April 5, 1991, ANDERSON had a "script" of events he had prepared to be delivered to a person for his use if contacted by the FBI.

f. On or about April 25, 1991, HOPKINS telephoned a person and discussed what that person should say if contacted by the FBI.

All in violation of Title 18, United States Code, Section 371.

A TRUE BILL:

*Mary F. Filer*  
FOREPERSON OF THE GRAND JURY

OKLAHOMA

# Corporation Commission

IMPRINTING OFFICE BUILDING

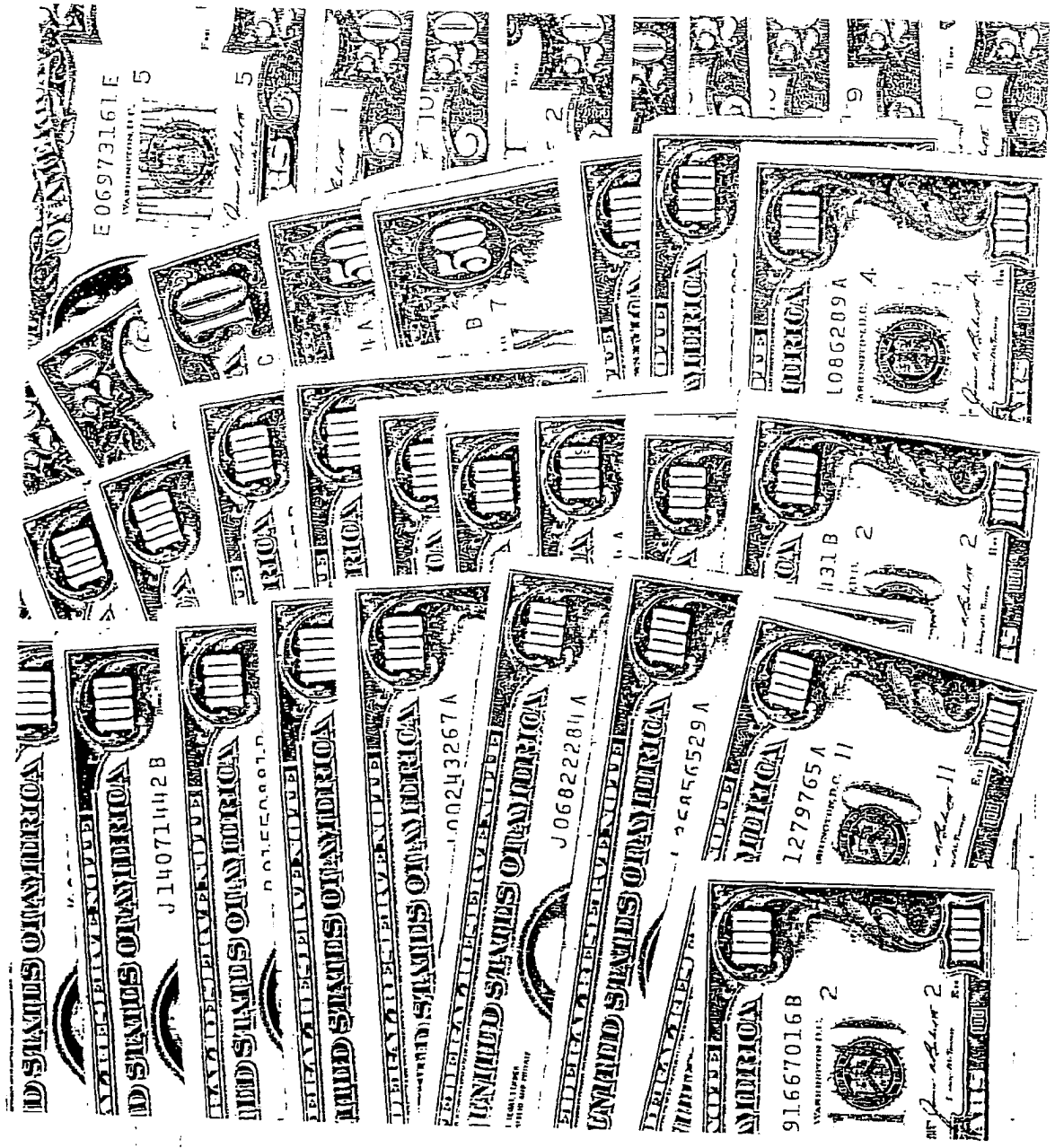
OKLAHOMA CITY, OKLAHOMA 73105

\$100    1    2.1  
 \$70    1    1.2  
 \$50    2    2  
 10    1    1

\$2,450.00

Feb 21, 1987  
 from Dave  
 Miller  
 100.

PENGAD 800-631-6989  
**EXHIBIT**  
 "3"





UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

FILED  
United States Court of Appeals  
Tenth Circuit  
FEB 14 1996

PATRICK FISHER  
Clerk

UNITED STATES OF AMERICA, )  
 )  
Plaintiff-Appellee, )  
 )  
v. )  
 )  
ROBERT (BOB) H. HOPKINS, )  
 )  
Defendant-Appellant. )

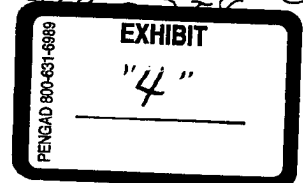
No. 95-6120  
(D.C. No. CR-93-137-A)  
(W.D. Oklahoma)

ORDER AND JUDGMENT\*

Before PORFILIO, ANDERSON, and KELLY, Circuit Judges.

Robert E. "Bob" Hopkins appeals his conviction for accepting a bribe while serving as a commissioner on the Oklahoma Corporation Commission, claiming the district court erred in denying his motion for severance. The issue in this case is whether Mr. Hopkins is entitled to severance when the jury will hear prejudicial evidence admissible only against a codefendant. We conclude the district court did not abuse its discretion by denying severance and AFFIRM.

\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.



I.

Mr. Hopkins was indicted for accepting a bribe in violation of 18 U.S.C. § 666(a)(1) to influence his vote on a public utilities rebate case pending before the Oklahoma Corporation Commission. Mr. Hopkins was tried jointly with codefendant William Anderson, an attorney who represented Southwestern Bell in Corporation Commission matters. Mr. Anderson was charged with paying the bribe.

Prior to trial, Mr. Hopkins moved for severance, claiming he would be prejudiced in a joint trial because the government planned to present evidence in the form of tape recorded statements made by Anderson which implicated Mr. Hopkins. Because Mr. Anderson was not going to testify at trial, Mr. Hopkins argued his confrontation rights would be compromised. The court denied the motion, and the government presented the tape recorded evidence at trial without further objection. When the tapes were offered into evidence and again in the closing charge, the court instructed the jury the tapes were to be considered as evidence against a defendant only where that defendant is a participant in the taped conversation, and not otherwise.

The original indictment included a conspiracy charge in violation of 18 U.S.C. § 1512(b)(3), alleging Anderson and Mr. Hopkins conspired to prevent agents of the FBI from learning about the illegal payments. Ultimately, the conspiracy charge was

dismissed. At the close of trial, however, the district court made a finding that the evidence showed a common plan involving Mr. Hopkins, Mr. Anderson and others. Consequently, the court determined acts or statements of one member of the joint venture were admissible against the other parties to the venture.

Mr. Hopkins now appeals the district court's denial of his severance motion, claiming the joint trial compromised his confrontation rights and prevented the jury from making a reliable judgment about his guilt or innocence. Essentially, Mr. Hopkins contends the severance rule set forth in *Bruton v. United States*, 391 U.S. 123 (1968), should not be limited strictly to cases involving codefendant confessions. Rather, the procedural protection should be extended to all cases involving codefendant statements that implicate a defendant and are protected from cross-examination because of the privilege against self-incrimination. Mr. Hopkins also argues the evidence was not admissible as coconspirator statements under Fed. R. Evid. 801(d)(2)(E) because the taped statements were not made in the furtherance of the conspiracy. He contends they were simply narrative statements that "spilled the beans" after the fact and fell outside the scope of the conspiracy.

## II.

Where joinder of defendants is proper under Fed. R. Crim. P. 8(b), severance is permissible only upon a showing of prejudice under Fed. R. Crim. P. 14. The rule does not require severance even if prejudice is shown; rather, it leaves any decision to

grant severance to the sound discretion of the trial court. *Zafiro v. United States*, 506 U.S. 534, \_\_\_, 113 S. Ct. 933, 938 (1993). Thus, we review denials of severance motions for abuse of discretion. *United States v. Scott*, 37 F.3d 1564, 1579 (10th Cir. 1994), cert. denied, 115 S. Ct. 773 (1995). To establish abuse of discretion, more is required than a mere showing that separate trials might have given defendants a better chance for acquittal. *Id.*

Mr. Hopkins contends the trial court abused its discretion to grant severance and erroneously admitted Anderson's tape recorded statements because the statements implicated Mr. Hopkins and he had no opportunity to cross-examine Anderson at trial, citing *Bruton*, 391 U.S. at 126. *Bruton* held that a defendant is deprived of his rights under the Confrontation Clause when his non-testifying codefendant's incriminating confession is introduced at their joint trial, even when the jury is given clear, concise, and understandable instructions to consider that confession only against the codefendant. By its context, *Bruton* is limited to codefendant's confessions. Although Mr. Hopkins urges us to extend *Bruton* to all incriminating codefendant statements by asking us to apply its protection to the government's tape recorded evidence, we decline to do so.

This court has consistently limited the application of *Bruton* to codefendant confessions. *United States v. Hill*, 901 F.2d 880, 883 (10th Cir. 1990). Arguments in favor of extending the rule's application to codefendant statements of admission have been rejected. *United States v. Rogers*, 652 F.2d 972, 976 (10th Cir.

1981). The *Bruton* Court recognized that a jury must be relied upon to follow limiting instructions and can be expected to disregard information at the court's direction. However, the devastating impact of a codefendant's confession creates a situation "in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored." *Bruton*, 391 U.S. at 135.

Here, the jury was not faced with Mr. Anderson's sworn confession. Moreover, it was instructed to consider various tape recorded conversations between Mr. Anderson and another Corporation Commissioner as evidence against Mr. Anderson exclusively. Although Mr. Anderson's admissions implicated Mr. Hopkins, we find no reason to conclude the jury was incapable of following the court's clear and thorough directive.

Further, the jury was restrained from using only some of the tape recorded evidence against Mr. Hopkins. In several of the taped conversations, Mr. Hopkins was a participant, and the jury was properly instructed that those tapes were admissible against him. Also, the conversations recorded in 1991, which involve discussions between Anderson and others including Mr. Hopkins, are directly related to the conspiracy to obstruct the FBI investigation. Even when a conspiracy is not charged, or dropped as in the present case, statements made by codefendants in the furtherance of a conspiracy are admissible where the existence of a conspiracy is independently established. *United States v.*

Cotton, 646 F.2d 430, 433 (10th Cir.), cert. denied, 454 U.S. 861 (1981). Here, the district court determined the conspiracy was independently established. The 1991 tapes involving the FBI investigation were, therefore, admissible against Mr. Hopkins under Fed. R. Evid. 801(d)(2)(E).

### III.

Finally, the government argues that any prejudice suffered by Mr. Hopkins due to the erroneous admission of Anderson's taped conversations was harmless error. We agree. Even if error occurred in the admission of the Anderson tapes not covered by Fed. R. Evid. 801(d)(2)(E), the statements were not of constitutional dimensions and "the error is deemed harmless unless it had a substantial influence on the outcome or leaves one in grave doubt as to whether it had such effect." *United States v. Flanagan*, 34 F.3d 949, 955 (10th Cir. 1994).

The record contains substantial testimony by a witness, Mike Murphy, describing the payoff procedure and how Murphy shared cash payments with Mr. Hopkins. The 1991 tapes, properly admitted under Fed. R. Evid. 801(d)(2)(E), detailed efforts to conceal the payoffs from the FBI. From those tapes, the jury heard recorded conversations among Hopkins, Anderson, Murphy and other Southwestern Bell executives plotting their "story" in the event federal agents questioned them. In light of the substantial evidence presented at trial and the repeated limiting instructions

given by the trial judge, we are satisfied that any potential error was harmless.

AFFIRMED.

U. . .

Entered for the Court

John C. Porfilio  
Circuit Judge

RECEIVED  
FEB 21 1996  
U.S. ATTY. WDL/OK

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION  
OF HOWARD W. MOTLEY, JR. FOR  
AN INQUIRY INTO THE RATES AND  
CHARGES OF SOUTHWESTERN BELL  
TELEPHONE COMPANY.

)  
) CAUSE NO. PUD 000662  
)

ORDER NO. 367868

ORDER OF THE COMMISSION

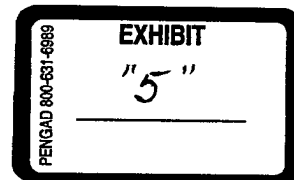




TABLE OF CONTENTS TO  
ORDER OF THE COMMISSION

	<u>Page</u>
I PROCEDURAL HISTORY . . . . .	2
II FINDINGS OF FACTS AND CONCLUSIONS OF LAW . . . . .	6
A. Jurisdiction . . . . .	6
B. Capital Structure and Return on Equity . . . . .	7
1. Capitalization . . . . .	7
2. Cost of Capital - Embedded Cost of Debt . . . . .	14
3. Cost of Common Equity and Overall Rate of Return . . . . .	15
C. Issues set forth in Exhibit 361	
Line 1 - 1989 actual results (per book) . . . . .	19
Line 2 - Year-end revenues: . . . . .	19
Line 3 - Local revenues . . . . .	19
Line 4 - Toll revenues . . . . .	23
Line 5 - Access . . . . .	27
Line 6 - Other . . . . .	28
Line 7 - Year-end wage & norwage: . . . . .	29
Line 8 - Management Survey . . . . .	29
Line 9 - Nonmanagement Survey . . . . .	34
Line 10 - Signing bonus . . . . .	39
Line 11 - Other wages . . . . .	41
Line 12 - Annualize wages & salaries . . . . .	49
Line 13 - Annualize norwage expense . . . . .	49
Line 14 - Payroll taxes . . . . .	50
Line 15 - Pro Forma 1990 nonmanagement wages . . . . .	51
Line 16 - Pro Forma 1990 management salaries . . . . .	51
Line 17 - Year-end depreciation & represcription . . . . .	53
Line 18 - Year-end gross receipts tax . . . . .	54
Line 19 - Exclusion of lobbying expense . . . . .	54
Line 20 - Inclusion of nonregulated services . . . . .	57
Line 21 - Maintenance of Service Charge (MSC) . . . . .	58
Line 22 - Imputation of Yellow Page operations . . . . .	61
Line 23 - Improved Mobile Telephone Service (IMTS) . . . . .	75
Line 24 - Bellcore dividends and investment: . . . . .	76
Line 25 - Divident/investment . . . . .	77
Line 26 - ROE . . . . .	79
Line 27 - Project disallowances . . . . .	80
Line 28 - Technology Resources project disallowances . . . . .	82
Line 29 - Prepayments/Materials and supplies . . . . .	83
Line 30 - Adjustment for reciprocity service . . . . .	84
Line 31 - Exclusion of aircraft expense . . . . .	85
Line 32 - Amortization of embedded \$200-\$500 investment . . . . .	85
Line 33 - One-half percent State sales tax increase . . . . .	86
Line 34 - End of reserve deficiency amortization . . . . .	87
Line 35 - 1990 Basic Allocation Factor (BAF) phase-down . . . . .	88
Line 36 - Optional Toll Calling Plan . . . . .	88
Line 37 - 1990 step of the COE CAT 3 transition . . . . .	90
Line 38 - 7-1-90 ODL rate reduction . . . . .	90
Line 39 - 1990 impact of toll pool stipulation . . . . .	92
Line 40 - End of inside wire amortization . . . . .	93
Line 41 - Uncollectibles . . . . .	93
Line 42 - SBC: . . . . .	94
Line 43 - Salary and wage . . . . .	94
Line 44 - Allocation factor . . . . .	96

Line 45	-	Public issues research . . . . .	100
Line 46	-	Marketing . . . . .	101
Line 47	-	5th Anniversary Expenses . . . . .	102
Line 48	-	Nonbusiness portion of conference . . . . .	102
Line 49	-	VINCE Project . . . . .	103
Line 50	-	Common Look Project . . . . .	104
Line 51	-	Custom Care Projects . . . . .	104
Line 52	-	Executive and Executive support . . . . .	105
Line 53	-	SBC Board of Directors . . . . .	107
Line 54	-	Corporate policy/Strategic development . . . . .	109
Line 55	-	SBC cash management . . . . .	110
Line 56	-	Advertising: . . . . .	111
Line 57	-	Corporate . . . . .	112
Line 58	-	Product . . . . .	112
Line 59	-	Advertising salaries . . . . .	114
Line 60	-	Customer deposits . . . . .	115
Line 61	-	Memberships and dues . . . . .	116
Line 62	-	Remove long-term TPUC . . . . .	117
Line 63	-	Wide Area Calling Plan (WACP) . . . . .	117
Line 64	-	Remove artwork . . . . .	118
Line 65	-	Income tax adjustments (separations factor chg) . . . . .	119
Line 66	-	GAAP: . . . . .	121
Line 67	-	Pension (FAS 87) . . . . .	122
Line 68	-	Compensated absences . . . . .	128
Line 69	-	1991 Basic Allocation Factor (BAF) phase-down . . . . .	131
Line 70	-	1991 Step of the COE CAT 3 Transition . . . . .	132
Line 71	-	Cash working capital: . . . . .	133
Line 72	-	SWBT Formula allowance . . . . .	133
Line 73	-	Staff Lead/Lag Study . . . . .	133
Line 74	-	AG Lead Lag Study (excludes noncash items) . . . . .	133
Line 75	-	7-1-91 CCL rate reduction . . . . .	137
Line 76	-	1991 Impact of Toll Pool Stipulation . . . . .	137
Line 77	-	CO-OP taxability . . . . .	138
Line 78	-	Postal rate increase . . . . .	139
Line 79	-	Debt refinancing . . . . .	140
Line 80	-	Minimum cash balances required . . . . .	141
Line 81	-	Advance payments . . . . .	141
Line 82	-	Internal audit - Marketing nonreg . . . . .	142
Line 83	-	GHQ prorate . . . . .	144
Line 84	-	Net Compensation Study . . . . .	146
Line 85	-	AT&T reimbursements . . . . .	150
Line 86	-	Ad valorem taxes . . . . .	152
Line 87	-	U.S. Olympic Festival . . . . .	153
Line 88	-	Company outing . . . . .	155
Line 89	-	Antitrust expenses . . . . .	156
Line 90	-	Short-term TPUC disallowance . . . . .	157
Line 91	-	Employee concessions . . . . .	161
Line 92	-	CATS revenue . . . . .	162
Line 93	-	SBC deferred compension liability . . . . .	163
Line 94	-	GHQ liabilities . . . . .	165
Line 95	-	GHQ outstanding drafts . . . . .	167
Line 96	-	Advance payments . . . . .	168
Line 97	-	Service improvement investment . . . . .	169
Line 98	-	Royalties . . . . .	170
Line 99	-	TOTAL ADJUSTMENTS . . . . .	177
Line 101	-	Revenue Requirement Effect of Income . . . . .	178
		Tax Difference (PLR) . . . . .	178

D.	Additional Rate Base, Expense and Revenue Issues	
	which are not on Exhibit 361 . . . . .	181
	"Other" Adjustments to Southwestern Bell Corporation. . . . .	181
	Gulf Printing Asset Lives . . . . .	182
	Gulf Printing Depreciation Rates . . . . .	182
	Monthly Plant Balances/Accumulated	
	Depreciation/Reserve Ratio . . . . .	182
	Interest Synchronization . . . . .	183

E. Excess Capacity Review . . . . . 185  
F. GHQ Labor Tracking System . . . . . 186  
G. Rate Design . . . . . 187  
H. Accelerated Network Modernization . . . . . 210  
I. Supreme Court Remand - PUD 000260 . . . . . 219  
J. ALJ Report - General Cause No. 29321 . . . . . 223  
K. Revenue Requirement . . . . . 223  
L. Refund . . . . . 224  
M. Miscellaneous Issues . . . . . 232

**III ORDER . . . . . 233**

Schedules A through E . . . . . Appended

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION ) CAUSE NO. PUD 000662  
OF HOWARD W. MOTLEY, JR. FOR AN )  
INQUIRY INTO THE RATES AND CHARGES )  
OF SOUTHWESTERN BELL TELEPHONE )  
COMPANY. ) ORDER NO. 367868

ORDER OF THE COMMISSION

HEARINGS: October 7-10, 14-18, 21-25, November 4-8, 18-22, 25, 26,  
December 6, 16, 17, 1991 and January 15-17, 27-31, 1992  
before the Administrative Law Judge.  
June 24, 25, and July 30, 1992 before the Commission  
en banc.

APPEARANCES: Maribeth D. Snapp, Deputy General Counsel, Donna D.  
McLain, Lu Willis, Rick D. Chamberlain and John W. Gray,  
Assistant General Counsels, appeared on behalf of the  
Commission Staff

Robert A. Butkin and Yasodhara M. Mohanty, Assistant  
Attorney Generals, appeared on behalf of Attorney General  
Susan Loving

Eric R. King, Martin Weeks, and Nancy Pennell, Attorneys,  
appeared on behalf of the American Association of Retired  
Persons

Glen A. Glass, George M. Makohin, Nancy L. Coats, Mark P.  
Royer, Thad Hollie, Jr., Garry Wann, Michael C. Cavell,  
Lawrence G. Crahan, and Paula J. Fulks, Attorneys,  
appeared on behalf of Southwestern Bell Telephone Company

Lawrence M. Huffman, William M. Franz and Elizabeth S.  
Wood, Attorneys, appeared on behalf of the Communication  
Workers of America

Ronald E. Stakem and Edward J. Cadieux, Attorneys,  
appeared on behalf of MCI Telecommunications Corporation

Nancy M. Thompson and Rich Kowalewski, Attorneys, appeared  
on behalf of U.S. Sprint Communications Company

Robert D. Allen, R. Stephen Davis, II, and Mark Witcher,  
Attorneys, appeared on behalf of AT&T Communications of  
the Southwest, Inc.

J. Cody Wilbanks, Attorney, appeared on behalf of GTE  
Southwest

Ron Comingdeer and Bill Bullard, Attorneys, appeared on  
behalf of the Oklahoma Rural Telephone Coalition

Cody B. Waddell, Attorney, appeared on behalf of Alltel  
Oklahoma, Inc., Oklahoma Alltel, Inc., Oklahoma  
Communications Systems, Inc., Chickasaw Telephone Company  
and Pine Telephone Company

Jerry Cord Wilson, Attorney, appeared on behalf of the  
Cable Television Operators of Oklahoma

Maj. Kenneth C. Kitzmiller, Attorney, appeared on behalf  
of the Department of Defense and all Federal Agencies of  
the Federal Government

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma being regularly in session and the undersigned Commissioners being present and participating, the above styled Cause comes on for decision and order concerning the hearing on the merits, the Administrative Law Judge's report issued herein on May 20, 1992, and the appeals thereto.

#### I. PROCEDURAL HISTORY

On January 29, 1986 the Oklahoma Corporation Commission (Commission) issued Order No. 292337 in General Cause No. 29321, which directed the Commission Staff (Staff) to review and/or continue to monitor certain factors which affect the proper level of rates for Southwestern Bell Telephone Company (SWBT or the Company). The Attorney General of the State of Oklahoma (AG) and SWBT appealed Order No. 292337 to the Oklahoma Supreme Court and thereafter, on November 8, 1988, the Oklahoma Supreme Court issued its opinion in the case of Turpen v. Oklahoma Corporation Commission, 769 P.2d 1309. Rehearing of this decision was granted in part and denied in part on January 17, 1989. On October 23, 1986, Staff filed Cause No. PUD 000260, which sought to review the effect of the 1986 Tax Reform Act on 11 utilities operating in Oklahoma. The hearing regarding SWBT in Cause No. PUD 000260 commenced January 26, 1989 before the Administrative Law Judge (ALJ). On January 25, 1989, in recognition of the need to address certain issues which the Commission had previously indicated in General Cause No. 29321 needed to be reviewed, as well as other issues the parties were not prepared to address in Cause No. PUD 000260, Staff filed the above entitled Cause of action seeking to review the rates and charges of SWBT.

Motions to Intervene were filed by AT&T Communications of the Southwest, Inc. (AT&T), MCI Telecommunications Corporation (MCI), American Association of Retired Persons (AARP), U.S. Sprint, Cable Television Operators of Oklahoma (CTOO), GTE Southwest (GTE), Oklahoma Rural Telephone Coalition (ORTC), Attorney General of the State of

Oklahoma, Communication Workers of America (CWA) and the Department of Defense and all Federal Agencies of the Federal Government. The Commission granted intervenor status to all parties requesting intervention.

On January 9, 1991, the AG filed a Motion and Brief requesting that the rates of SWBT be placed subject to refund and that SWBT be compelled to answer the data requests of the AG. On January 10, 1991, the AG filed a Motion to Advance, requesting that the hearing on their Motion to Place Rates Subject to Refund and to Compel Discovery be heard by the Commission en banc. On January 15, 1991, SWBT filed a pleading entitled "Response to Motion and Update of Attorney General to Compel Discovery and Motion to Establish Discovery and Procedural Schedules." On January 16, 1991, the Commission's ALJ conducted a hearing concerning the AG's motion to advance the hearing on the Motion to Place Rates Subject to Refund to the Commission en banc. The Commission issued Order No. 353465 on January 18, 1991 which established a procedural schedule in the above styled Cause, as well as Cause No. PUD 000837, for (1) a hearing on the Motion to Place Rates Subject to Refund, (2) discovery, and (3) a hearing on the merits of Cause Nos. PUD 000837 and PUD 000662. The AG gave oral notice of his intent to appeal the ALJ's denial of the Motion to Advance and the Commission en banc heard arguments concerning said appeal on January 30, 1991.

The ALJ conducted a hearing February 4, 1991 concerning the issues which should be the subject of the hearing on the Motion to Place Rates Subject to Refund and orally advised the parties of his ruling on February 6, 1991. The oral ruling of the ALJ, which is fully set forth at page two of the ALJ's report filed March 14, 1991, found that the only issue which should be addressed at the hearing on the Motion to Place Rates Subject to Refund was the appropriate return on equity (ROE) for SWBT. The ALJ further advised the parties that the hearing on the Motion to Place Rates Subject to Refund would be February 22, 1991. SWBT orally advised the parties of its intent to appeal the oral ruling

of the ALJ and on February 11, 1991, filed an appeal to the ALJ's oral decision.

SWBT agreed to present its appeal to the February 6, 1991 oral decision of the ALJ after the ALJ conducted a hearing on the merits of the Motion to Place Rates Subject to Refund and issued a written report thereon.

The Commission issued Order No. 354075 on February 8, 1991 which denied the Motion to Advance and directed that the ALJ conduct a hearing concerning the Motion to Place Rates Subject to Refund on March 7, 14, and 15, 1991. On February 12, 1991, the AG filed "Attorney General's Request that Commission Issue an Order Nunc Pro Tunc so that the Previously Set Hearing on Motion to Place Bell's Rates Subject to Refund can proceed on February 22 as scheduled by the Administrative Law Judge." In response to this pleading, the Commission issued Order No. 354531 on February 21, 1991 which denied the AG's request for an Order Nunc Pro Tunc and directed that the hearing on the Motion to Place Rates Subject to Refund be changed from March 7, 14, and 15, 1991 to March 7 and 8, 1991.

On February 28, 1991, the AG filed prefiled testimony for witnesses Michael J. Ileo and Michael Brosch, as well as a Motion requesting that the proprietary testimony of these two witnesses be filed in the Office of General Counsel, Oklahoma Corporation Commission.

On March 4, 1991, SWBT filed a Motion to Strike Testimony and Motion in Limine or, In the Alternative, Motion for Continuance (Motion to Strike). In SWBT's Motion to Strike, SWBT requested that any testimony which was not directly related to the appropriate ROE be stricken to the extent such testimony was related to issues other than ROE, which would be beyond the scope of the ALJ's ruling for issues to be addressed at the time of the hearing on the Motion to Place Rates Subject to Refund. SWBT further requested that, if the Motion to Strike were denied, it be

granted a continuance of the hearing on the Motion to Place Rates Subject to Refund, in order to allow it the opportunity to present testimony on issues other than ROE, in response to the testimony of the AG's witnesses. SWBT's Motion to Strike was argued to the ALJ on March 7, 1991, prior to the hearing on the Motion to Place Rates Subject to Refund.

The ALJ conducted a hearing on the merits of the Motion to Place Rates Subject to Refund on March 7 and 8, 1991 and issued his report concerning said hearing March 14, 1991. SWBT timely filed its appeal to the ALJ's report on March 25, 1991 and the AG and Commission Staff filed their responses to said appeal on April 1, 1991.

On April 12, 1991, the Commission en banc heard the arguments of Counsel concerning SWBT's appeal and the responses thereto. On April 19, 1991 the Commission issued an Interim Order, Order No. 356271 which adopted the Report of the ALJ. On May 16, 1991, SWBT filed a Petition in Error with the Supreme Court of Oklahoma (Case No. 77,563). Specifically, SWBT was appealing the Commission placing its currently approved rates subject to refund. Further, SWBT filed another petition with the Oklahoma Supreme Court (Case No. 77,521) requesting that the Court assume original jurisdiction. On June 20, 1991, the Court denied SWBT's request to assume original jurisdiction. On September 9, 1991, the Oklahoma Supreme Court dismissed Case No. 77,563, indicating that the appeal was premature because it was an appeal to an Interim Order. On September 20, 1991, Staff filed a Motion to Consolidate Cause No. PUD 000662 and Cause No. PUD 000837. Staff's Motion was granted by the Commission in Order No. 360521, however, SWBT subsequently filed a motion requesting that it be permitted to voluntarily withdraw Cause No. PUD 000837.

Said Motion was granted as to SWBT's relief requested in Cause No. PUD 000837, but the cause was not dismissed to the extent that it concerned any affirmative relief which might have been requested by any



other party. On October 7, 1991, a hearing on the merits of the above styled Cause began before the ALJ and continued through January 31, 1992, at which time the presentation of the evidence was completed by all parties and the record was closed by the ALJ. The ALJ issued his recommendations in a Report dated May 20, 1992.

On May 28, 1992, the ALJ heard arguments relating to the Motion to Clarify Report filed by Staff. Thereafter all parties filed their respective appeals to the Commission en banc and the Commission heard oral arguments relating to these appeals on June 24 and 25, 1992.

In deliberating this Cause, the Commission heard oral arguments of Counsel, reviewed the transcripts of testimony and exhibits thereto, read the summaries of testimony and findings of fact prepared by the parties and considered the recommendations of the ALJ. In lieu of repeating the summaries of evidence provided by the parties, the Commission has recited the evidence it considered within the discussion of each issue herein. In adopting the following findings of fact and conclusions of law, the Commission determined the findings set forth herein to be credible, persuasive and supported by substantial evidence.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. JURISDICTION

This Commission has jurisdiction in this Cause pursuant to Art. IX, Section 18 of the Oklahoma Constitution, Title 17, Section 131, et seq. of the Oklahoma Statutes, and its Rules and Regulations Governing and Regulating the Operation of Telephone Companies and Telecommunications in Oklahoma (Telephone Rules). This Commission further finds that it has jurisdiction over SWBT and the subject matter of the application herein and that due and proper notice was given and made as required by law and the Orders of this Commission.

This Commission entered Interim Order No. 355271 on April 19, 1991, and stated that SWBT's authorized return on equity (ROE) would be reduced to 11.41 percent, effective the date of said Order, and that said ROE would remain in effect and the revenues of SWBT would be subject to refund to the extent they exceed 11.41 percent ROE until December 31, 1991. Thereafter, on December 27, 1991, this Commission entered Order No. 362281 which extended the previous Interim Order until April 10, 1992. On April 10, 1992, this Commission entered Order No. 364631 which extended the previous Interim Order until August 7, 1992. On August 6, 1992, this Commission entered Order No. 367460 which extended the previous Interim Order until September 4, 1992 or until a final order issues, whichever is earlier.

## B. CAPITAL STRUCTURE AND RETURN ON EQUITY

### 1. Capitalization

The Oklahoma Supreme Court in Turpen v. Oklahoma Corporation Commission, 769 P.2d 1309 (Okla. 1988) mandated that the Commission closely monitor SWBT's capital structure. The Court stated at p. 1331:

"In handling future requests for rate relief, the Commission must continue to monitor SWBT's capital structure closely." (emphasis added)

In order to establish the overall rate of return (ROR) for SWBT's utility operations, we must first determine the appropriate capitalization component ratios. The process of determining a utility's capital structure for ratemaking purposes requires a balancing of ratepayer and investor interests while considering expected economic and financial conditions. In adopting a capital structure for ratemaking purposes, the Commission must determine whether the utility's actual capital structure properly reflects a prudent and economically efficient combination of debt and common equity based upon the risks of providing the utility service. If the capital structure is found not to be representative of a mix of financing consistent with the implicit risk

of the utility, then the Commission has the responsibility to establish a hypothetical capital structure which accomplishes this objective.

When establishing a capital structure of SWBT for ratemaking purposes, the Commission must examine the total corporate capital structure of SWBT and the affiliated corporate entities of Southwestern Bell Corporation (SBC) in order to determine: (1) whether the capital structure assigned and retained in the financial statements of SWBT by SBC properly reflects the financial and business risk of the regulated utility; and (2) whether the capital structure assigned and retained in the financial statements of SWBT is being materially influenced by the financial and business risk of the unregulated affiliates of SBC. SWBT, in this case, is a regulated utility which is a subsidiary of SBC. The equity capital for SWBT and the unregulated affiliates of SBC is issued and retained by SBC. Thus, the cost of equity and the percentage of equity in the total corporate capital structure of which SWBT is part, reflects the combined risks of all affiliated companies of SBC.

In this case, SWBT proposed that its actual capital structure at test year end, December 31, 1989, be utilized, and represented that, as reflected on its books and records, the Company's capital structure was 40.99 percent debt and 59.01 percent common equity. AG witness Matthew Kahal recommended that a hypothetical capital structure be utilized and indicated that an appropriate hypothetical capital structure would be 47 percent debt and 53 percent equity. Mr. Kahal recommended that the embedded cost of debt be deemed to be 9.07 percent, based upon the Company's estimate contained in its Minimum Standard Filing Requirements (MSFR) with minor adjustments for the cost of short-term debt. Staff witness Dr. Kennedy also recommended a hypothetical capital structure and indicated that his recommendation utilized 44 percent debt, with an embedded cost of debt of 9.15 percent, and an equity level of 56 percent of total capital. The record in this Cause reflects that Dr. Kennedy developed a hypothetical capital structure for SWBT for ratemaking purposes, by removing the nonregulated capitalization from its parent

SBC's total capitalization. Dr. Kennedy utilized Standard & Poor's (S&P's) Industrial Firms Index and S&P's capital structure to delineate the unregulated portion of SBC's capitalization. He stated that the remainder should be the capital structure for the regulated portion, which in this particular case resulted in his recommended hypothetical capital structure of 44 percent debt and 56 percent equity. (Tr. 11/4/91 pp. 83, 84.)

Dr. Kennedy patterned his proposed hypothetical capital structure after a methodology practiced by the New York State Public Service Commission which he stated represents a sound approach to deriving a hypothetical capital structure for a public utility. Dr. Kennedy testified that his proposed analysis was straight forward and intuitively valid.

Dr. Kennedy testified that it was appropriate for a regulatory commission to adopt a hypothetical capital structure for a regulated utility if a regulatory commission believed that ratepayers are being requested to pay a higher revenue requirement as a result of the higher equity ratio maintained in the actual capital structure. Dr. Kennedy stated that the expectations of the regulatory commission are based upon lower revenue requirements related to a hypothetical capital structure, which more correctly reflects the capital employed to finance the regulated telephone investment of SWBT. Dr. Kennedy recognized that the capitalization necessary to fund nonregulated ventures of SBC should not be borne by the utility ratepayers. Dr. Kennedy testified that a hypothetical capital structure was appropriate in this case because the regulated intrastate markets of SWBT's Oklahoma operations exhibit less business risk than those of its consolidated parent, SBC, as demonstrated by the aggressive posture of SWBT's parent in pursuing investment in Telemex and three cable television companies at a substantial cost. Dr. Kennedy contrasted SBC's actions with that of SWBT's Oklahoma operations. He testified that the favorable regulatory treatment SWBT has received from the Commission contributes to the lower business risk experienced in its regulatory operations.

The record reflects that Mr. Kahal opposed the inclusion of 59 percent common equity in SWBT's capital structure, indicating that this level of common equity was excessive and unnecessary for a low-risk utility company such as SWBT. He indicated that using an unnecessarily high common equity ratio for setting rates leads to excessive costs to ratepayers. This result derives from the fact that the cost of equity is generally higher than the cost for debt and that the equity return dollars carry an income tax obligation. Mr. Kahal recommended a hypothetical capital structure stating that his hypothetical 47 percent debt and 53 percent equity capital structure, which reflects the average capital structure of the seven (7) Regional Holding Companies (RHC). He further stated that his hypothetical capital structure contains a higher equity level than is employed by the "high risk" independent telephone companies. It was his belief that his proposed hypothetical capital structure resolved the financial cross-subsidization problem which would otherwise arise as a result of SBC providing regulated telephone utility service through SWBT, as well as being the parent company for unregulated subsidiaries with much more risk than SWBT.

Mr. Kahal rebutted SWBT witness Avera's claim that comparison with the capital structure of other Bell operating companies, rather than the regional holding companies, was the appropriate comparison. Mr. Kahal testified that such a test would be circular, because all the Bell holding companies had the same incentive as SBC to load excessive equity into the utility subsidiaries, whose equities are not publicly traded, thus forcing captive ratepayers to subsidize nonregulated activities. He testified that the proper standard to use is the RHC average, not the operating company average, because, as noted by the Federal Communication Commission (FCC), the RHCs are publicly traded and cannot engage in leverage shifting financial manipulations. (Exhibit 193, Kahal rebuttal, p. 6.)

SWBT recommended the use of 40.99 percent debt and 59.01 percent equity indicating that this level represented the actual capital

structure at test year end (TYE). SWBT argued that a higher debt ratio would jeopardize its bond ratings and threaten its ability to raise capital on reasonable terms, thus resulting in increased costs of both debt and equity capital.

However, Dr. Kennedy testified that although much discussion was offered over the necessity to maintain a strong bond rating, it was likely that the higher revenues required to satisfy the financial benchmarks of the rating agencies (i.e. coverage ratios) and the credit rating desired by management would not produce the lowest revenue requirements for the benefit of ratepayers. Dr. Kennedy stated that the relationships among higher debt ratios, bond ratings, and revenue requirements should be targeted to achieve an equilibrium where revenue requirements are minimized and the Company has access to the capital markets at reasonable terms. Dr. Kennedy pointed out that the Company had not conducted any analyses that measured the impact on the revenue requirements of SWBT's Oklahoma operations at a bond rating ranging from AAA to BBB.

AG witness Kahal argued that the Commission should not provide SWBT in Oklahoma an inflated rate of return merely to satisfy external bond rating agencies. In fact, he pointed out that Dr. Avera had been unable to identify any specific benefits that ratepayers would receive through a higher SWBT bond rating. Mr. Kahal further pointed out that any benefit from a favorable bond rating occurs only when new debt is issued. Because SWBT was able to fund virtually all of its utility capital needs from internally-generated cash, and only a small percentage of the Company's outstanding debt is scheduled to mature over the next ten years, he indicated that concern with SWBT's bond rating should not be given undue consideration.

SWBT asserted through Dr. Brigham that the use of an imputed capital structure was inappropriate. The record reflects that this assertion was sharply disputed. In particular, AG witness Kahal pointed out that

the model by which Brigham attempted to make this point was flawed, because; (1) The model did not identify the type of companies relied upon (utility or non-utility); (2) The model did not specify the time frame which was studied; and (3) The model ignored the results of Brigham's own econometric study in favor of some vague, unsubstantiated rule of thumb. (Tr. 11/4/91, pp. 70-72; Exhibit 193, Kahal rebuttal, pp. 16-19.)

Mr. Kahal performed his own regression analysis, confined to the RHCs, which demonstrated that there was a coefficient of a three basis point increase in the cost of equity for every one percentage increase in the debt ratio. (Tr. 11/4/91, p. 71.) To provide even greater conservatism to his analysis, Mr. Kahal employed a much larger coefficient of six. Even with this larger coefficient, Mr. Kahal demonstrated that the use of the hypothetical capital structure would result in overall cost savings to the ratepayers.

This Commission, in Order No. 292337, issued in General Cause No. 29321, (the last major rate case for SWBT), considered the adoption of a hypothetical capital structure and determined that, because there had been no showing that: (1) the actual capital structure was manifestly unsound; (2) the actual capital structure constituted imprudent management policy; or, (3) that the actual capital structure worked to the ultimate detriment of the ratepayer, then the actual capital structure would be adopted for the purposes of Cause No. 29321. However, the Commission indicated that it would continue to closely monitor SWBT's capital structure.

The Oklahoma Supreme Court, in the Turpen decision which resulted from the appeal of Order No. 292337 in Cause No. 29321, at p 1331, found:

"While the Commission's decision to allow SWBT to use its actual capital structure is upheld, the Commission is instructed that in its handling of future requests for rate relief it is to investigate and address the impact of the above two factors [the

Increased business risk of the unregulated SBC subsidiaries and the increased competition facing the basic telephone operations of states other than Oklahoma] on SWBT's capital structure and to impute a hypothetical capital structure if the investigation should indicate that the capital structure chosen by SWBT is more equity-laden than necessitated by basic telephone operations in Oklahoma."

The Commission finds that in the present Cause, there is substantial evidence as presented through the testimony of Dr. Kennedy and Mr. Kahal, that the actual capital structure of SWBT is more equity-laden relative to the level required for business risks related to SWBT's regulated utility operations in Oklahoma, and that this additional equity retained in SWBT's actual capital structure results from financing decisions at the SBC corporate level with regard to business risk related to SBC equity, generally. The Commission further finds that because the appropriate capital structure for use in establishing rates for SWBT's Oklahoma customers should only reflect that level of equity which is necessary to provide utility service, a hypothetical capital structure shall be adopted in this Cause.

We find ample legal authority in ordering this hypothetical capital structure. The Supreme Court in Turpen, supra, clearly directed the Commission to impute a hypothetical capital structure once it determined that the Company's actual capital structure is more equity-laden than necessitated by basic telephone operations in Oklahoma. Specifically, the Court stated:

"In its treatment of future rate relief requests the Commission must impute a hypothetical capital structure if the one chosen by SWBT is more equity-laden than necessitated by basic telephone operations in Oklahoma."

. . .

"The practice of imputing a hypothetical debt-equity ratio for purposes of rate setting is accepted throughout the United States. The reason for doing so is to protect ratepayers from excessive capital charges. The ratepayers of a regional holding company that raises funds jointly for both its competitive ventures and its regulated services are especially in need of protection from having to pay for excessive capital charges." *Id.* at page 1329.



We are not persuaded by SWBT's assertion that the Commission must find that the Company's actual capital structure is unreasonable before we can determine a rate of return on the basis of a hypothetical capital structure. The Commission has a duty to insure that ratepayers are not penalized by SBC's decision to maintain a low debt ratio on a total SBC basis below that ratio required by the business risks related to SWBT's telephone utility operations, for purposes related to the higher risks incurred from unregulated subsidiaries of SWBT's parent SBC.

Accordingly, the Commission finds that the capital structure recommended by Staff witness Dr. Kennedy, consisting of 44 percent debt and 56 percent equity, shall be adopted by the Commission in this Cause. By approving the above-referenced hypothetical capital structure, the Commission is availing itself of its authority to regulate the industry as an efficient enterprise, rather than a luxurious one, while ensuring that SWBT's customers receive quality service at the lowest reasonable rates. In adopting this hypothetical capital structure, the Commission notes that the analyses and conclusions of Dr. Kennedy and Mr. Kahal were substantially similar and support the appropriateness of imputing a hypothetical capital structure for SWBT. In making this determination, the Commission is convinced that it has appropriately balanced the interests of the ratepayers in receiving quality utility service at the lowest reasonable rates with the interests of the stockholders in obtaining a fair return on their equity investment which is consistent with the risk business of an investment in SWBT only.

## 2. Cost of Capital - Embedded Cost of Debt

The determination of a utility's embedded cost of debt is generally accomplished from reviewing and analyzing its cost of debt related to the individual debt instruments in the capital structure used to finance investment. The evidence reflects that as of December 31, 1989, SWBT's weighted average embedded cost of debt was 9.15 percent. The record reflects that Dr. Kennedy argued that adopting a hypothetical capital

structure with an equity ratio of 56 percent as compared to SWBT's actual 59.01 percent equity level would not necessarily require use of a hypothetical cost of debt because the Company's debt coverage ratios would remain adequate to maintain an acceptable bond rating.

The record further reflects that the ALJ recommended the adoption of 9.07 percent as the cost of debt for SWBT's capital structure. The Commission notes that this finding reflects two adjustments to SWBT's 9.15 percent debt cost reflected at TYE. The first adjustment is the use of a twelve-month average for short-term debt rather than year-end levels. This adjustment recognizes and accounts for the fluctuation of short-term debt during the test year by normalizing to a monthly average. The second adjustment is the application of a 6.5 percent cost rate to the short-term debt component of capital structure, slightly higher than SWBT's current cost of debt.

The Commission finds that the ALJ's recommendation concerning the embedded cost of debt is based upon substantial evidence and, therefore, adopts 9.07 percent as the cost of debt.

### 3. Cost of Common Equity and Overall Rate of Return

In determining the Company's cost of common equity, the Commission must establish a return on equity (ROE). A proper ROE is one which is:

. . . "commensurate with returns on investments in other enterprises having corresponding risks' and which is 'sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital'. . . ."

Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 603 (1944).

While theoretically straightforward, application of these standards require, as a practical matter, the careful analysis of financial data

from companies in the telephone industry, the assessment of expected market conditions, the examination of investor expectations, and ultimately, the exercise of informed judgment.

The range of recommended ROEs in this Cause was from 11.9 percent to 14.0 percent. SWBT's witness, Dr. Avera, recommended a ROE of 14.0 percent, as being the midpoint of his 13.75-14.25 percent cost of equity range. He performed several analyses, including the constant growth discounted cash flow (DCF) model, two applications of the general form of the DCF model, and the risk premium method. Mr. Kahal, the AG's witness, recommended an 11.9 percent ROE based upon his use of the DCF model, which he applied to the seven RHCs as a proxy for SWBT. Mr. Kahal also rebutted Dr. Avera's claim that the use of the DCF method produced unreliable results. He pointed out that the high degree of earnings stability and the large number of analysts following the RHCs made it especially suitable for the DCF methodology. He further explained that assumptions which underlay the constant growth DCF model do not significantly reduce the usefulness of the DCF model, because (1) certain assumptions proceed directly from the assumption that the stock market is an efficient market; and (2) other assumptions simplify the mathematics without distorting the final results. Further, as a reasonableness check, Mr. Kahal performed a two-stage growth rate analysis using both a short-term growth rate and a sustained or long-term growth rate. He found that for the seven RHCs, the growth rates were about the same.

Mr. Kahal rejected Bell witness Avera's attempt to determine ROE through the risk premium method which attempts to determine cost of equity by reference to cost of debt. Mr. Kahal suggested that in assessing investor expectations, that Dr. Avera relied upon studies which were oriented towards the electric utility industry, not the telephone industry. Finally, Mr. Kahal testified that other studies were discredited because they reflected outdated investor surveys conducted by a professional expert witness for utilities.

Dr. Kennedy, Staff's expert witness, recommended an ROE of 12.20 percent based upon the average of the results of his analyses utilizing the DCF model, which calculated an equity return requirement of 12.0 percent and a risk premium analysis which calculated a 12.4 percent equity return requirement.

Although each of the witnesses used a DCF model, the data selected for use in their respective calculations and the sample companies used for evaluation purposes varied among the witnesses, thus resulting in variations among their respective recommended ROEs.

The Commission is mindful that it must consider the fact that our evaluation of an appropriate ROE only relates to SWBT's influence on the riskiness of an investment in the corporate equity of SBC since SWBT does not issue stock itself, and that SBC has other subsidiaries whose activities will contribute greater risks to an investment in SBC equity than those of SWBT. Also, the other subsidiaries influence the perception of the strengths or weaknesses of the corporation, its anticipated growth, and the value of the stock. The Commission, after thoroughly reviewing the record, including the testimony of these witnesses, their calculations and their reasoning, as well as their choices of data for use in their calculations, finds that the appropriate ROE to be adopted in this Cause is 12.20 percent. This 12.20 percent ROE level is compatible with the hypothetical capital structure mix previously determined to be appropriate for the Company.

With respect to the appropriate rate of return on SWBT rate base, the Commission notes that the ALJ's recommendation that the weighted cost of capital should be 10.858 percent, utilizing the hypothetical capital structure recommended by Staff, is not supported by the ALJ's own conclusions. On page 154 of the ALJ report, the ALJ concluded that a ROR of 10.858 percent is derived using a hypothetical capital structure for SWBT, incorporating a ROE of 12.20 percent and using the

actual cost of debt for SWBT as of December 31, 1989. However, on Page 12 of his report, the ALJ recommends a 9.07 percent cost of debt which incorporates two minor changes to SWBT's actual December 31, 1989 cost of debt. Under this analysis, the ALJ should have concluded that the ROR of SWBT is 10.823 percent utilizing a hypothetical capital structure of 44.0 percent debt and 56.0 percent equity and the 9.07 percent cost of debt adopted by the ALJ on page 12 of his Report. The proper equation for calculating the ROR is debt ratio times debt cost, plus equity ratio times equity cost, and is illustrated in the following formula:

	<u>Ratio</u>	<u>Cost</u>	<u>Weighted Cost</u>
Debt	44.0%	9.07%	3.991%
Equity	56.0%	12.20%	6.832%
	<u>100.0%</u>		<u>10.823%</u>

Therefore, the Commission finds that the recommendation of the ALJ shall be rejected with regard to the overall ROR on rate base and that the ROR of SWBT shall be 10.823 percent utilizing the analysis set forth above.

### C. ISSUES SET FORTH IN EXHIBIT 361

Exhibit 361 contains a listing of approximately one hundred general and specific adjustments. The Commission notes that the parties did not appeal every adjustment as set forth in Exhibit 361. Those unappealed adjustments were nonetheless independently reviewed by this Commission and the evidence supporting those adjustments was examined to insure that it represented the appropriate determination concerning those issues.

As a result of that independent review, the Commission finds that all Exhibit 361 adjustments recommended by the ALJ which were not appealed by the parties hereto, shall be adopted as clarified by the Commission within this Order.

The following individual line item discussions correspond to the line item shown on Exhibit 361 and the corresponding line item contained in Schedule E attached to this Order. Schedule E summarizes the revenue, expense, and rate base impact of this Commission's decision on issues addressed in the instant Cause.

Line 1 - 1989 Actual Results

The record reflects that the ALJ concluded that the starting point for both Staff's and SWBT's analysis was SWBT's 1989 book results of revenues, expenses and rate base. The record also reflects that the AG began with SWBT's April Minimum Filing Schedule.

The Commission has reviewed the record and finds that the ALJ's recommendation to use SWBT's actual 1989 book values as the starting point for determining revenues, expenses and rate base is supported by substantial evidence, is reasonable, was not appealed by the parties and is hereby adopted by this Commission.

Accordingly, the actual SWBT 1989 book results of revenues, expenses, and rate base, which amount to \$568,394,327, \$444,830,039 and \$857,678,021 respectively, are presented on Line 1 of Schedule E.

Line 2 - Year End Revenues

This line represents a general heading only and contains no issues to be determined by this Commission.

Line 3 - Year End Revenues: Local

Staff witness Mr. Crosslin proposed an adjustment to annualize recurring local revenues. He testified that he calculated SWBT's pro forma recurring revenues by multiplying SWBT's December 1989 revenues times 12. He further testified that the pro forma revenue level was

adjusted to reflect conditions or events in existence at TYE that were not fully reflected in the actual test year data.

SWBT witness Mr. Chicoine recommended annualizing recurring revenues by multiplying the last quarter of the test year times four. He argued that Mr. Crosslin's annualization of recurring revenues, which merely multiplied December 1989 revenues times 12, was not a valid adjustment since one month's data would not provide a reasonable indication of an ongoing level of revenue. He further stated that seasonal variations alone could make the use of any single month as the basis of a revenue annualization adjustment questionable. Additionally, Mr. Chicoine argued that Mr. Crosslin did not normalize the revenue booked during December 1989 to adjust for any abnormal or out-of-period amounts. He asserted that these factors distorted Mr. Crosslin's year-ending adjustment.

The record reflects that Mr. Crosslin did not recommend any adjustment to nonrecurring local revenues, therefore that amount remained at TYE book levels. Mr. Crosslin stated that nonrecurring revenues are more seasonal in nature than recurring revenues, and that it would be inappropriate to use the December revenue level times 12 method he used to annualize recurring revenues for purposes of annualizing nonrecurring revenues. He further stated that he believed that the Company could expect to at least maintain the level of nonrecurring local revenues booked during the test year because his analysis of inward movement of access lines reflected a trend of increasing nonrecurring revenues. Mr. Crosslin stated that Exhibit 313, (SWBT's Response to data request GM 64,) indicated that SWBT's 1990 actual recurring and nonrecurring local access revenues were higher than his proposed revenues.

Mr. Chicoine argued that Staff erred by refusing to make an adjustment to normalize nonrecurring local revenues. Mr. Chicoine stated that by not making an adjustment to nonrecurring local revenues,

a less representative amount of test-period revenue was used to determine future rates in this Cause. Mr. Chicoine stated that using all twelve months' data, yet not normalizing all twelve months' data, increased the opportunity for abnormal or out-of-period revenue to be erroneously included in Staff's test-period revenue. He gave the example that nonrecurring local revenue actually booked in both May and August, 1989 was considerably higher than the average monthly revenue for the other ten months. He explained that these two high months were caused by the nonrecurring charges for the emergency 911 (E911) systems installed in Oklahoma City and Tulsa. He stated that since there are no other cities in Oklahoma large enough to generate similar levels of one-time charges, these E911 nonrecurring revenues, totaling \$2,143,000, should have been excluded from the test period.

Mr. Chicoine argued that Mr. Crosslin's method of annualizing Line 6 - Other Year-end Revenues such as Directory, Billing and Collection, and Miscellaneous Revenue was incorrect for the same reasons mentioned for recurring and nonrecurring local revenues.

AG witness Brosch also employed a December-times-twelve approach to annualize recurring local revenues (e.g., monthly exchange service revenues), under which recorded amounts in December 1989 were multiplied by twelve and then compared to actual calendar year 1989 revenues to derive the appropriate annualization. Mr. Brosch stated that the advantage of his proposed annualization methodology, over SWBT's fourth-quarter-times-four method, is that December amounts were more representative of year-end business volumes, and were consistent with use of a year-end rate base. Mr. Brosch testified that Staff also used a December-times-twelve methodology to annualize recurring revenues, but that Staff omitted recurring revenue amounts for certain information delivery services and other exchange business which should have been annualized. (Exhibits 137, 137a, Brosch testimony, pp. 12-14; Exhibits 323, 323a, Schedule C-1; Exhibit 318, Brosch Summary (unexpurgated), p. 4; Exhibit 361, Lines 2-6.)



Mr. Brosch argued that SWBT's arbitrary selection of three months' revenue data to extrapolate to an annualized nonrecurring revenue level was not likely to produce meaningful results. He testified that SWBT's adjustment to annualize local nonrecurring revenues reflects a 10 percent reduction from test year levels. Mr. Brosch stated that when asked about this discrepancy, the Company could explain less than half of this decrease and acknowledged the existence of distortive data within its calculation.

The Commission notes that SWBT's testimony confirmed that year-end recurring levels were more representative of ongoing revenue streams than were fourth-quarter revenues. Thus, Bell witness Chicoine testified that access lines, which he acknowledged were the "driver" of recurring local revenues, had increased in years subsequent to the test year, indicating that year-end 1989 levels would be a conservative representation of ongoing revenue streams.

The Commission finds that Staff's method of calculating local revenues provides a closer approximation of SWBT's expected revenue-generating capabilities as of TYE. Although use of a single month may distort revenues in some cases, it did not do so in the instant case. Exhibit 313 is persuasive in that it indicates that the actual 1990 local recurring revenues received by SWBT were more than Staff's proposed revenues. Additionally, SWBT's request to annualize the fourth-quarter recurring revenues would result in understating revenues and result in future potential over-earning by SWBT. The Commission finds that Staff's method of calculating recurring and nonrecurring local and other revenues is appropriate and the Commission adopts Staff's adjustment at Column C, Lines 3 and 6, Exhibit 361.

The Commission notes SWBT's disagreement with Staff's local revenue adjustments but is persuaded by Staff's analysis of inward movement, and Exhibit 313 showing higher revenues in 1990 than 1989, which reflect the

appropriateness of Staff's use of December, 1989 data to annualize the amount of local revenues to determine SWBT's future earnings capability. Therefore, the Commission finds that Staff's method of calculating local and other revenues is appropriate and adopts Staff's adjustment at Column C, Line 3 and Line 6, of Exhibit 361.

These adjustments are reflected as adjustments to revenues on Lines 3 and 6 of Schedule E in the amounts of \$997,777 and \$1,341,984 respectively.

Line - 4 Year End Revenues: Toll

Staff witness Mr. Manning testified that the intraLATA toll revenue for SWBT results from an intrastate pooling arrangement between all local exchange carriers (LECs) in Oklahoma. Mr. Manning explained that the settlements from the toll pool are a replacement of the settlements with AT&T before divestiture and are not subsidies to independent telephone companies as Mr. Chicoine had indicated in his direct testimony. Mr. Manning agreed that these settlements represent a viable way to distribute toll revenues to participants in the toll network in Oklahoma.

Mr. Manning further explained that the matching of expenses to revenues for the pooling process is done monthly with quarterly true-ups and annual audit adjustments performed by the Toll Pool Administrator and its employees. He stated that Staff's adjustments were based upon the actual revenues calculated by the toll pool, which were completed subsequent to the audit test period, but finalized before Staff filed its testimony.

Mr. Manning disagreed with SWBT's recommendation to annualize the last quarter data of the test year for toll revenues. Mr. Manning testified that using actual revenues and expenses from reports prepared by the Toll Pool Staff was more accurate than annualizing one quarter of

the year. He explained that SWBT's annualization method did not reflect the seasonality of toll activity, such as holidays or the beginning and ending of school terms. Mr. Manning further disagreed with Mr. Chicoine's rationale that because Staff had used the fourth quarter annualization method in SWBT's last full rate case (General Cause No. 29321), it should do so again. Mr. Manning explained that during the previous rate case, the actual test year amounts were not representative of usage because it was the first year access charges were in effect. He further explained that because SWBT's books were a morass of exceptions in General Cause No. 29321, Staff had to rely upon the last quarter amounts of the test year and annualize them, believing that method to be more representative of the expected future than the historical 12 months' experience during the abnormal test year.

Mr. Manning also proposed adjusting toll revenues for an accrual of a disputed amount which may be refundable from SWBT to its interexchange customers. He stated that the potential for the refund arose from a case before the Commission regarding multijurisdictional WATS lines. He further stated that Cause No. PUD 000254 established a lower rate than previously authorized for the use of a single WATS line in the intrastate, as well as the interstate, environment. He added that the lower rate was disputed, and an appeal pending before the Oklahoma Supreme Court resulted in a stay of the order which established the lower rate. Mr. Manning indicated that SWBT is currently charging the higher authorized rate for WATS access lines and the difference between the two rates is subject to refund pending the decision of the Oklahoma Supreme Court. Because of these circumstances, he reversed the accrual for the difference between the actual amount billed and the potential lower rate.

Mr. Manning proposed adjusting the intraLATA toll revenue for the impact of other Staff adjustments that have a material impact on the settlement amounts derived from the intraLATA toll pool. (Manning - Prefiled testimony 8/12/91 p. 3). Mr. Manning stated that the

adjustments made by Staff will change the settlements provided by the pools, because these pools allow each company in the pool to recover expenses and investment used to support the toll network in Oklahoma. He further stated that any change to the reported investment or expenses of a pooling company will affect the revenue derived from settlements. He estimated the total impact of Staff's adjustments to the test year intraLATA toll revenues as shown on Section K, Schedule 3, Page 4 in Parts I, II, and III of Exhibit 363.

SWBT witness Chicoine disagreed with the method used by Staff. He testified that SWBT year-ended the toll revenues by normalizing the booked revenue for the fourth quarter of 1989, and annualizing the fourth quarter's normalizing revenue to obtain a TYE level. He explained that the fourth quarter was selected because it reflected SWBT's revenue levels at year-end and was broad enough to be representative of a full twelve-month test period. He claimed that the Commission has historically applied year-ending techniques consistent with SWBT's approach. Mr. Chicoine testified that Mr. Manning did not make year-ending adjustments to the test year revenue for intraLATA toll and carrier access revenue. He stated that not year-ending these revenue categories produced a less reasonable indication of an ongoing level of revenue.

Mr. Chicoine disagreed with Mr. Manning's adjustment to reverse the accrual for WATS access line revenues. He testified that SWBT's normalization of the fourth-quarter toll revenue included removal of the difference between the 19.2 cents and 27.6 cents per minute WATS revenues, and that by not recognizing the potential reduction SWBT would never obtain recovery for the lost revenue.

Mr. Chicoine further disagreed with Staff's toll pool settlement effect of year-ending adjustments, to billed intraLATA toll carrier access, and billing and collection revenue. He testified that adjustment for toll pool settlement effects are required only for

year-ending adjustments to billed amounts, not year-ending adjustments to test year toll pool settlements themselves. He stated that Staff did not determine the toll pool settlements effects of its adjustments to these types of billed revenues.

Staff, SWBT and AG all sponsored varying adjustments to year-end toll revenues. Staff determined actual test year toll pool revenues and made normalizing adjustments. SWBT normalized the fourth-quarter booked revenues and then annualized that amount to obtain a TYE level. The AG normalized test year toll revenue and annualized that amount based upon growth in access lines occurring through December 31, 1989.

Further, Staff argued that using SWBT's proposed method for calculating toll revenues, which is based solely upon the fourth quarter multiplied by four methodology, does not incorporate all known and measurable information. For example, the last quarter of the calendar year does not reflect the seasonal nature of toll usage.

Staff urged the Commission to reject the ALJ's recommendation and stated that the Commission has consistently utilized the finalized toll settlements method to calculate toll revenues in previous rate cases. Staff argued that its proposed methodology represents the actual test year level of toll usage which affects SWBT's revenues and has been used both before divestiture and since divestiture for toll revenues.

The Commission agrees with Staff's and AG's arguments that the use of the fourth quarter to normalize and annualize toll pool revenues is not as reliable a method for calculating anticipated revenues as utilizing the actual revenues as annualized. The use of the fourth quarter to determine test year revenues in SWBT's last rate case, General Cause No. 29321, was necessitated by the fact that it was the first year access charges had occurred and SWBT's booked revenue levels reflected many abnormal factors. The use of the fourth-quarter revenues in that particular rate proceeding does not constitute a mandatory

Commission approach to ratemaking. Therefore, the Commission finds that Staff's use of actual finalized toll revenues, as adjusted for known and measurable changes which impacted 1990 revenues, is reasonable, supported by substantial evidence and the Commission hereby adopts Staff's adjustment at Column C, Line 4, Exhibit 361.

This adjustment is reflected as an adjustment to revenues on Line 4 of Schedule E in the amount of \$2,829,707.

Line 5 - Year End Revenues: Access

Staff witness Mr. Manning recommended that the test year jurisdictional access revenues be adjusted for a decrease of approximately \$1 million caused by out-of-period items. He stated that the three adjustments which were responsible for this change in access revenues were: (1) reversal of a 1988 accrual not applicable to 1989; (2) recognition of a settlement concerning disputed billing which was settled out-of-period; and, (3) reversal of out-of-period Surcharge Pool revenues. Mr. Manning adjusted out-of-period activity by reversing a SWBT adjustment of a 1988 accrual made in July 1989. He stated that SWBT's adjustment had the effect of reducing the current-year revenues for the unrealized accrual from 1988. He further testified that Staff recognized the revenue, which would apply to 1989, from a four year disputed billing with AT&T, which was settled after the test year. The amount which applied to 1989 was one-fourth of the total amount. Additionally, he adjusted access revenues for Surcharge Pool revenues earned prior to 1989 in the amount of \$816,785 as an out-of-period adjustment.

SWBT's witness Mr. Chicoine testified that Mr. Manning did not make year-ending adjustments to the test year access revenue. He further testified that Mr. Manning incorrectly made adjustments to the test year toll pool settlement amounts, instead of making adjustments to the billed amounts.

AG witness Brosch agreed that Staff did adjust access revenues for out-of-period accounting adjustments but noted Staff did not adjust for growth in volume of business, which was recognized by SWBT in its access revenue methodology.

Staff opposed use of the fourth-quarter multiplied by four methodology for access revenues, as recommended by the ALJ, even though using the ALJ's recommendation for calculating access revenues resulted in an increase of \$197,000 to access revenue over Staff's method. Staff argued that the use of the fourth-quarter multiplied by four methodology did not incorporate all known and measurable data and that the last quarter of a year did not reflect the seasonal nature of access usage by the interexchange carriers.

The Commission has reviewed the record and finds that Staff's adjustments to access revenues are appropriate because they eliminate out-of-period activity which should be removed. Therefore, the Commission finds that Staff's adjustments shall be adopted as shown at Column C, Line 5, of Exhibit 361.

This adjustment is reflected as a reduction to revenues on Line 5 of Schedule E in the amount of \$1,047,135.

Line 6 - Year End Revenues: Other

The record reflects that Staff witness Crosslin adjusted other year-end revenues, both recurring and nonrecurring, in a manner consistent with the adjustments he proposed for local year-end revenues. Having accepted Staff's rationale for its proposed adjustments to local revenues, the Commission finds that Staff's proposed adjustments to other year-end revenues are also reasonable, proper, supported by substantial evidence and shall be adopted for the reasons set forth in the discussion above at Line 3 - Year-end Revenues: Local.

This adjustment is reflected as an adjustment to revenues on Line 3 of Schedule E in the amount of \$997,777.

Line 7 - Year End Wage & Nonwage

This line represents a general heading only and contains no issues to be determined by this Commission.

Line 8 - Management Survey

Staff and the AG appealed the ALJ's recommendations relating to Line 8 of Exhibit 361 - Management Survey.

Staff and the AG requested that the Commission reject the ALJ's recommendation to deny Staff's disallowance of management salaries which exceed the 75th percentile of the market. The record reflects that the ALJ recommended rejection of Staff's proposed management cash compensation adjustment, indicating that there was no basis for finding that SWBT's management compensation was excessive, imprudent or inefficient. The ALJ further found that SWBT has structured its management compensation in a manner which is consistent with the practices of the United States' largest corporations. The ALJ further stated it was inappropriate to evaluate the reasonableness of compensation on the basis of a single year's data or to accord greater weight to multi-industry rankings than to industry-specific rankings when both are available. Staff also took exception to the ALJ's use of imprudence and inefficiency as foundations for his recommendation to reject Staff's proposed adjustments. In its appeal, Staff notes that imprudence and inefficiency were not presented by the Staff as being the basis for Staff's proposed adjustment. Staff further argues that these terms do not appear in the record in this Cause and therefore cannot form the basis for the ALJ's recommendations concerning this adjustment.



**PAGES 30-232 ARE NOT INCLUDED PER**

**OKLA. SUP. CT R. 1.191(d)2**

**SUCH PAGES BEING VOLUMINOUS AND IMMATERIAL**

The Commission has reviewed the record and transcript and finds the ALJ correctly denied SWBT's objections for the reasons stated therein. We likewise find the contested testimony proffered and accepted by the ALJ to be credible, persuasive, relevant and competent in all respects.

ORDER

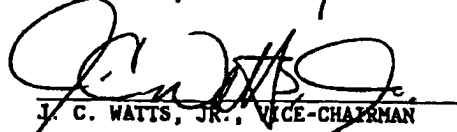
IT IS THEREFORE THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA that the findings and conclusions set forth above in Sections A through M, and as summarized by the Schedules A, B, C, D and E, attached hereto and incorporated herein, are hereby adopted as the Order of this Commission.

IT IS FURTHER ORDERED that SWBT file tariffs with the Commission which conform to this Order within 30 days from the date of the issuance of this Order. Said tariffs to be effective immediately upon approval by the Director, Public Utility Division.

IT IS FURTHER ORDERED that the refund ordered herein shall continue to accrue, with interest as set forth herein, until such time as new rates become effective.

CORPORATION COMMISSION OF OKLAHOMA

  
BOB ANTHONY, CHAIRMAN

  
J. C. WATTS, JR., VICE-CHAIRMAN

  
CODY L. GRAVES, COMMISSIONER

DONE AND PERFORMED this 26th day of AUGUST, 1992,

BY ORDER OF THE COMMISSION:

  
CHARLOTTE W. FLANAGAN, Secretary

SOUTHWESTERN BELL TELEPHONE COMPANY  
 State of Oklahoma  
 Part I  
 INTRASTATE REVENUE DEFICIENCY  
 T.Y.E. 12/31/89; CAUSE NO. PUD 000662

1	Southwestern Bell Hypothetical Capital Structure:			
		Weight	Cost	Weighted Cost
	Debt	44.000%	9.070%	3.99080%
	Equity	56.000%	12.200%	6.83200%
2	Rate of Return			10.823%
3	Intrastate Rate Base (Schedule E, Line 100)			\$796,422,702
4	Net Income Requirement (L.2 x L.3)			\$86,195,236
5	Income Taxes Required			20,242,074
6	Pre Tax Operating Income Required (L.4 + L.5)			\$106,437,310
7	Pro Forma Operating Expenses (Schedule E, Line 103)			434,505,752
8	Revenue Requirement (L.6 + L.7)			\$540,943,062
9	Less: Pro Forma Revenues (Schedule E, Line 100)			(638,390,046)
10	Revenue Deficiency or (Excess) Before Adjustments			(\$97,446,984)
11	Gross-up for Gross Receipts Tax (L.10 x Factor)		0.0000000	0
12	Gross-up for Uncollectibles ((L.10 + L.11) x Factor)		0.0114189	(1,112,737)
13	Revenue Deficiency or (Excess) (L.10+L.11+L.12)			(\$98,559,721)
14	Revenue Requirement for AT&T Reimbursements (Cause No. 29321 Remand)			(1,997,576)
15	Sub-total			(100,557,297)
16	Revenue Requirement for Network Modernization			7,800,000
17	Total Excess Net of Network Modernization & Cause No. 29321 Remand			(92,757,297)
18	Pro Forma Revenues (Schedule E, Line 100)			\$638,390,046
19	Less: Yellow Pages Revenues (Schedule E, Line 22)			(\$60,658,850)
20	Other Non-tariff Revenue Sources			(30,204,380)
21	Total Excess Net of Network Modernization and Cause No. 29321 Remand (L. 17)		(92,757,297)	(183,620,527)
22	SWBT Pro Forma Revenue Requirement (L.18 - L. 21)			\$454,769,519

SOUTHWESTERN BELL TELEPHONE COMPANY  
 State of Oklahoma  
 Part II  
 INTRASTATE REVENUE DEFICIENCY  
 T.Y.E. 12/31/89; CAUSE NO. PUD 000662

SCHEDULE B

		Weight	Cost	Weighted Cost
1	Southwestern Bell Hypothetical Capital Structure:			
	Debt	44.000%	9.070%	3.99080%
	Equity	56.000%	11.410%	6.38960%
2	Rate of Return			10.380%
3	Intrastate Rate Base (Schedule E, Line 100)			\$808,619,896
4	Net Income Requirement (L.2 x L.3)			\$83,937,980
5	Income Taxes Required			18,579,028
6	Pre Tax Operating Income Required (L.4 + L.5)			\$102,517,008
7	Pro Forma Operating Expenses (Schedule E, Line 103)			465,435,186
8	Revenue Requirement (L.6 + L.7)			\$567,952,194
9	Less: Pro Forma Revenues (Schedule E, Line 100)			(642,081,086)
10	Revenue Deficiency or (Excess) Before Adjustments			(\$74,128,892)
11	Gross-up for Gross Receipts Tax (L.10 x Factor)		0.000000	0
12	Gross-up for Uncollectibles ((L.10 + L.11) x Factor)		0.0114189	(846,470)
13	Revenue Deficiency or (Excess) (L.10+L.11+L.12)			(\$74,975,362)
14	Revenue Requirement for AT&T Reimbursements (Cause No. 29321 Remand)			(1,997,576)
15	Revenue Deficiency or (Excess)			(\$76,972,938)
16	Pro Forma Revenues (Schedule E, Line 100)			\$642,081,086
17	Less: Yellow Pages Revenues (Schedule E, Line 22)		(\$60,658,850)	
18	Other Non-tariff Revenue Sources		(30,204,380)	
19	Total Excess Net of Cause No. 29321 Remand (L.15)		(76,972,938)	(167,836,168)
20	SWBT Pro Forma Revenue Requirement (L.18 - L. 21)			\$474,244,918

SOUTHWESTERN BELL TELEPHONE COMPANY  
 State of Oklahoma  
 Part III  
 INTRASTATE REVENUE DEFICIENCY  
 T.Y.E. 12/31/89; CAUSE NO. PUD 000662

SCHEDULE C

		Weight	Cost	Weighted Cost	
1	Southwestern Bell Hypothetical Capital Structure:				
	Debt	44.000%	9.070%	3.99080%	
	Equity	56.000%	11.410%	6.38960%	
2	Rate of Return				10.380%
3	Intrastate Rate Base (Schedule E, Line 100)				\$798,546,710
4	Net Income Requirement (L.2 x L.3)				\$82,892,343
5	Income Taxes Required (Section J, Schedule 1)				18,188,946
6	Pre Tax Operating Income Required (L.4 + L.5)				\$101,081,289
7	Pro Forma Operating Expenses (Schedule E, Line 103)				434,341,528
8	Revenue Requirement (L.6 + L.7)				\$535,422,817
9	Less: Pro Forma Revenues (Schedule E, Line 100)				(638,390,046)
10	Revenue Deficiency or (Excess) Before Adjustments				(\$102,967,229)
11	Gross-up for Gross Receipts Tax (L.10 x Factor)		0.000000		0
12	Gross-up for Uncollectibles ((L.10 + L.11) x Factor)		0.0114189		(1,175,772)
13	Revenue Deficiency or (Excess) (L.10+L.11+L.12)				(\$104,143,001)
14	Revenue Requirement for AT&T Reimbursements (Cause No. 29321 Remand)				(1,997,576)
15	Revenue Deficiency or (Excess)				(\$106,140,577)
16	Pro Forma Revenues (Schedule E, Line 100)				\$642,081,086
17	Less: Yellow Pages Revenues (Schedule E, Line 22)			(\$60,658,850)	
18	Other Non-tariff Revenue Sources			(30,204,380)	
19	Total Excess Net of Cause No. 29321 Remand (L.15)			(106,140,577)	(197,003,807)
20	SWBT Pro Forma Revenue Requirement (L.18 - L. 21)				\$445,077,279

SOUTHWESTERN BELL TELEPHONE COMPANY  
COMMISSION DECISION REFUND METHODOLOGY  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Days	Daily Excess Dollars (Footnotes 1 & 2)	Daily Interest (Factor of 0.0296863% Footnote 3)	Accumulated Refund Dollars
1	\$210,885	\$62.60	\$210,948
2	210,885	125.23	421,958
3	210,885	187.87	633,031
4	210,885	250.53	844,166
5	210,885	313.21	1,055,364
6	210,885	375.90	1,266,625
7	210,885	438.62	1,477,949
8	210,885	501.35	1,689,335
9	210,885	564.11	1,900,784
10	210,885	626.88	2,112,296
11	210,885	689.67	2,323,871
12	210,885	752.48	2,535,508
13	210,885	815.30	2,747,209
14	210,885	878.15	2,958,972
15	210,885	941.01	3,170,798
16	210,885	1,003.90	3,382,687
17	210,885	1,066.80	3,594,639
18	210,885	1,129.72	3,806,653
19	210,885	1,192.66	4,018,731
20	210,885	1,255.62	4,230,872
21	210,885	1,318.59	4,443,075
22	210,885	1,381.59	4,655,342
23	210,885	1,444.60	4,867,671
24	210,885	1,507.64	5,080,064
25	210,885	1,570.69	5,292,520
26	210,885	1,633.76	5,505,038
27	210,885	1,696.85	5,717,620
28	210,885	1,759.95	5,930,265
29	210,885	1,823.08	6,142,973
30	210,885	1,886.23	6,355,745
31	210,885	1,949.39	6,568,579
32	210,885	2,012.57	6,781,477
33	210,885	2,075.77	6,994,437
34	210,885	2,138.99	7,207,461
35	210,885	2,202.23	7,420,549
36	210,885	2,265.49	7,633,699
37	210,885	2,328.77	7,846,913
38	210,885	2,392.06	8,060,190
39	210,885	2,455.38	8,273,530
40	210,885	2,518.71	8,486,934
41	210,885	2,582.06	8,700,401
42	210,885	2,645.43	8,913,931
43	210,885	2,708.82	9,127,525
44	210,885	2,772.23	9,341,182
45	210,885	2,835.66	9,554,903
46	210,885	2,899.10	9,768,687
47	210,885	2,962.57	9,982,535
48	210,885	3,026.05	10,196,446
49	210,885	3,089.55	10,410,420
50	210,885	3,153.07	10,624,458
51	210,885	3,216.61	10,838,560
52	210,885	3,280.17	11,052,725
53	210,885	3,343.75	11,266,954
54	210,885	3,407.35	11,481,246
55	210,885	3,470.96	11,695,602
56	210,885	3,534.60	11,910,022
57	210,885	3,598.25	12,124,505
58	210,885	3,661.92	12,339,052
59	210,885	3,725.61	12,553,663
60	210,885	3,789.32	12,768,337

SOUTHWESTERN BELL TELEPHONE COMPANY  
COMMISSION DECISION REFUND METHODOLOGY  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Days	Daily Excess Dollars (Footnotes 1 & 2)	Daily Interest (Factor of 0.02968634 Footnote 3)	Accumulated Refund Dollars
61	\$210,885	\$3,853.05	\$12,983,075
62	210,885	3,916.80	13,197,877
63	210,885	3,980.57	13,412,742
64	210,885	4,044.35	13,627,672
65	210,885	4,108.16	13,842,665
66	210,885	4,171.98	14,057,722
67	210,885	4,235.82	14,272,843
68	210,885	4,299.68	14,488,027
69	210,885	4,363.56	14,703,276
70	210,885	4,427.46	14,918,588
71	210,885	4,491.38	15,133,965
72	210,885	4,555.32	15,349,405
73	210,885	4,619.27	15,564,909
74	290,796	4,706.97	15,860,412
75	290,796	4,794.70	16,156,003
76	290,796	4,882.45	16,451,682
77	290,796	4,970.22	16,747,448
78	290,796	5,058.02	17,043,302
79	290,796	5,145.85	17,339,244
80	290,796	5,233.71	17,635,273
81	290,796	5,321.59	17,931,391
82	290,796	5,409.49	18,227,596
83	290,796	5,497.43	18,523,890
84	290,796	5,585.38	18,820,271
85	290,796	5,673.37	19,116,741
86	290,796	5,761.38	19,413,298
87	290,796	5,849.42	19,709,943
88	290,796	5,937.48	20,006,677
89	290,796	6,025.57	20,303,498
90	290,796	6,113.68	20,600,408
91	290,796	6,201.83	20,897,406
92	290,796	6,289.99	21,194,492
93	290,796	6,378.19	21,491,666
94	290,796	6,466.41	21,788,929
95	290,796	6,554.65	22,086,279
96	290,796	6,642.93	22,383,718
97	290,796	6,731.22	22,681,245
98	290,796	6,819.55	22,978,861
99	290,796	6,907.90	23,276,565
100	290,796	6,996.28	23,574,357
101	290,796	7,084.68	23,872,238
102	290,796	7,173.11	24,170,207
103	290,796	7,261.57	24,468,264
104	290,796	7,350.05	24,766,410
105	290,796	7,438.56	25,064,645
106	290,796	7,527.09	25,362,968
107	290,796	7,615.65	25,661,380
108	290,796	7,704.24	25,959,880
109	290,796	7,792.85	26,258,469
110	290,796	7,881.49	26,557,146
111	290,796	7,970.16	26,855,913
112	290,796	8,058.85	27,154,767
113	290,796	8,147.57	27,453,711
114	290,796	8,236.32	27,752,743
115	290,796	8,325.09	28,051,864
116	290,796	8,413.89	28,351,074
117	290,796	8,502.71	28,650,373
118	290,796	8,591.56	28,949,760
119	290,796	8,680.44	29,249,237
120	290,796	8,769.34	29,548,802

SOUTHWESTERN BELL TELEPHONE COMPANY  
COMMISSION DECISION REFUND METHODOLOGY  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Days	Daily Excess Dollars (Footnotes 1 & 2)	Daily Interest (Factor of 0.0296863% Footnote 3)	Accumulated Refund Dollars
121	\$290,796	\$8,858.27	\$29,848,457
122	290,796	8,947.23	30,148,200
123	290,796	9,036.21	30,448,032
124	290,796	9,125.22	30,747,953
125	290,796	9,214.26	31,047,963
126	290,796	9,303.32	31,348,063
127	290,796	9,392.41	31,648,251
128	290,796	9,481.52	31,948,529
129	290,796	9,570.66	32,248,895
130	290,796	9,659.83	32,549,351
131	290,796	9,749.02	32,849,896
132	290,796	9,838.25	33,150,530
133	290,796	9,927.49	33,451,254
134	290,796	10,016.77	33,752,067
135	290,796	10,106.07	34,052,969
136	290,796	10,195.39	34,353,960
137	290,796	10,284.75	34,655,041
138	290,796	10,374.13	34,956,211
139	290,796	10,463.53	35,257,471
140	290,796	10,552.97	35,558,820
141	290,796	10,642.42	35,860,258
142	290,796	10,731.91	36,161,786
143	290,796	10,821.42	36,463,403
144	290,796	10,910.96	36,765,110
145	290,796	11,000.53	37,066,907
146	290,796	11,090.12	37,368,793
147	290,796	11,179.74	37,670,769
148	290,796	11,269.38	37,972,834
149	290,796	11,359.06	38,274,989
150	290,796	11,448.75	38,577,234
151	290,796	11,538.48	38,879,568
152	290,796	11,628.23	39,181,993
153	290,796	11,718.01	39,484,507
154	290,796	11,807.82	39,787,110
155	290,796	11,897.65	40,089,804
156	290,796	11,987.51	40,392,588
157	290,796	12,077.39	40,695,461
158	290,796	12,167.30	40,998,424
159	290,796	12,257.24	41,301,477
160	290,796	12,347.21	41,604,621
161	290,796	12,437.20	41,907,854
162	290,796	12,527.22	42,211,177
163	290,796	12,617.26	42,514,590
164	290,796	12,707.34	42,818,094
165	290,796	12,797.43	43,121,687
166	290,796	12,887.56	43,425,371
167	290,796	12,977.71	43,729,144
168	290,796	13,067.89	44,033,008
169	290,796	13,158.10	44,336,962
170	290,796	13,248.33	44,641,007
171	290,796	13,338.59	44,945,141
172	290,796	13,428.88	45,249,366
173	290,796	13,519.19	45,553,681
174	290,796	13,609.53	45,858,087
175	290,796	13,699.90	46,162,583
176	290,796	13,790.29	46,467,169
177	290,796	13,880.71	46,771,846
178	290,796	13,971.16	47,076,613
179	290,796	14,061.63	47,381,471
180	290,796	14,152.13	47,686,419



SOUTHWESTERN BELL TELEPHONE COMPANY  
COMMISSION DECISION REFUND METHODOLOGY  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Days	Daily Excess Dollars (Footnotes 1 & 2)	Daily Interest (Factor of 0.0296863% Footnote 3)	Accumulated Refund Dollars
181	\$290,796	\$14,242.66	\$47,991,457
182	290,796	14,333.21	48,296,587
183	290,796	14,423.80	48,601,806
184	290,796	14,514.40	48,907,117
185	290,796	14,605.04	49,212,518
186	290,796	14,695.70	49,518,010
187	290,796	14,786.39	49,823,592
188	290,796	14,877.11	50,129,265
189	290,796	14,967.85	50,435,029
190	290,796	15,058.62	50,740,884
191	290,796	15,149.42	51,046,829
192	290,796	15,240.24	51,352,865
193	290,796	15,331.09	51,658,992
194	290,796	15,421.97	51,965,210
195	290,796	15,512.87	52,271,519
196	290,796	15,603.81	52,577,919
197	290,796	15,694.77	52,884,410
198	290,796	15,785.75	53,190,991
199	290,796	15,876.76	53,497,664
200	290,796	15,967.80	53,804,428
201	290,796	16,058.87	54,111,283
202	290,796	16,149.96	54,418,229
203	290,796	16,241.09	54,725,266
204	290,796	16,332.23	55,032,394
205	290,796	16,423.41	55,339,614
206	290,796	16,514.61	55,646,924
207	290,796	16,605.84	55,954,326
208	290,796	16,697.10	56,261,819
209	290,796	16,788.38	56,569,404
210	290,796	16,879.69	56,877,079
211	290,796	16,971.03	57,184,846
212	290,796	17,062.39	57,492,705
213	290,796	17,153.78	57,800,654
214	290,796	17,245.20	58,108,696
215	290,796	17,336.65	58,416,828
216	290,796	17,428.12	58,725,052
217	290,796	17,519.62	59,033,368
218	290,796	17,611.15	59,341,775
219	290,796	17,702.70	59,650,274
220	290,796	17,794.29	59,958,864
221	290,796	17,885.89	60,267,546
222	290,796	17,977.53	60,576,320
223	290,796	18,069.19	60,885,185
224	290,796	18,160.89	61,194,142
225	290,796	18,252.60	61,503,190
226	290,796	18,344.35	61,812,331
227	290,796	18,436.12	62,121,563
228	290,796	18,527.92	62,430,887
229	290,796	18,619.75	62,740,302
230	290,796	18,711.60	63,049,810
231	290,796	18,803.48	63,359,409
232	290,796	18,895.39	63,669,101
233	290,796	18,987.33	63,978,884
234	290,796	19,079.29	64,288,759
235	290,796	19,171.28	64,598,727
236	290,796	19,263.30	64,908,786
237	290,796	19,355.34	65,218,937
238	290,796	19,447.42	65,529,181
239	290,796	19,539.52	65,839,516
240	290,796	19,631.64	66,149,944

SOUTHWESTERN BELL TELEPHONE COMPANY  
COMMISSION DECISION REFUND METHODOLOGY  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Days	Daily Excess Dollars (Footnotes 1 & 2)	Daily Interest (Factor of 0.0296863† Footnote 3)	Accumulated Refund Dollars
241	\$290,796	\$19,723.80	\$66,460,464
242	290,796	19,815.98	66,771,076
243	290,796	19,908.19	67,081,780
244	290,796	20,000.43	67,392,576
245	290,796	20,092.69	67,703,465
246	290,796	20,184.98	68,014,446
247	290,796	20,277.30	68,325,519
248	290,796	20,369.65	68,636,685
249	290,796	20,462.02	68,947,943
250	290,796	20,554.42	69,259,293
251	290,796	20,646.85	69,570,736
252	290,796	20,739.30	69,882,272
253	290,796	20,831.79	70,193,899
254	290,796	20,924.30	70,505,620
255	290,796	21,016.84	70,817,432
256	290,796	21,109.40	71,129,338
257	290,796	21,202.00	71,441,336
258	290,796	21,294.62	71,753,426
259	290,796	21,387.26	72,065,610
260	290,796	21,479.94	72,377,886
261	290,796	21,572.64	72,690,254
262	290,796	21,665.37	73,002,716
263	290,796	21,758.13	73,315,270
264	290,796	21,850.92	73,627,917
265	290,796	21,943.73	73,940,656
266	290,796	22,036.57	74,253,489
267	290,796	22,129.44	74,566,414
268	290,796	22,222.34	74,879,433
269	290,796	22,315.26	75,192,544
270	290,796	22,408.21	75,505,748
271	290,796	22,501.19	75,819,045
272	290,796	22,594.20	76,132,436
273	290,796	22,687.23	76,445,919
274	290,796	22,780.29	76,759,495
275	290,796	22,873.38	77,073,165
276	290,796	22,966.50	77,386,927
277	290,796	23,059.64	77,700,783
278	290,796	23,152.81	78,014,732
279	290,796	23,246.01	78,328,774
280	290,796	23,339.24	78,642,909
281	290,796	23,432.50	78,957,137
282	290,796	23,525.78	79,271,459
283	290,796	23,619.09	79,585,874
284	290,796	23,712.43	79,900,383
285	290,796	23,805.79	80,214,984
286	290,796	23,899.19	80,529,680
287	290,796	23,992.61	80,844,468
288	290,796	24,086.06	81,159,350
289	290,796	24,179.53	81,474,326
290	290,796	24,273.04	81,789,395
291	290,796	24,366.57	82,104,557
292	290,796	24,460.13	82,419,814
293	290,796	24,553.72	82,735,163
294	290,796	24,647.34	83,050,607
295	290,796	24,740.98	83,366,144
296	290,796	24,834.65	83,681,774
297	290,796	24,928.35	83,997,499
298	290,796	25,022.08	84,313,317
299	290,796	25,115.83	84,629,228
300	290,796	25,209.61	84,945,234

SOUTHWESTERN BELL TELEPHONE COMPANY  
COMMISSION DECISION REFUND METHODOLOGY  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Days	Daily Excess Dollars (Footnotes 1 & 2)	Daily Interest (Factor of 0.0296863% Footnote 3)	Accumulated Refund Dollars
301	\$290,796	\$25,303.42	\$85,261,333
302	290,796	25,397.26	85,577,527
303	290,796	25,491.13	85,893,814
304	290,796	25,585.02	86,210,195
305	290,796	25,678.94	86,526,670
306	290,796	25,772.89	86,843,239
307	290,796	25,866.87	87,159,902
308	290,796	25,960.88	87,476,658
309	290,796	26,054.91	87,793,509
310	290,796	26,148.97	88,110,454
311	290,796	26,243.06	88,427,493
312	290,796	26,337.18	88,744,627
313	290,796	26,431.32	89,061,854
314	290,796	26,525.50	89,379,175
315	290,796	26,619.70	89,696,591
316	290,796	26,713.93	90,014,101
317	290,796	26,808.18	90,331,705
318	290,796	26,902.47	90,649,404
319	290,796	26,996.78	90,967,196
320	290,796	27,091.12	91,285,084
321	290,796	27,185.49	91,603,065
322	290,796	27,279.89	91,921,141
323	290,796	27,374.31	92,239,311
324	290,796	27,468.77	92,557,576
325	290,796	27,563.25	92,875,935
326	290,796	27,657.76	93,194,389
327	290,796	27,752.29	93,512,937
328	290,796	27,846.86	93,831,580
329	290,796	27,941.45	94,150,318
330	290,796	28,036.07	94,469,150
331	290,796	28,130.72	94,788,076
332	290,796	28,225.40	95,107,098
333	290,796	28,320.10	95,426,214
334	290,796	28,414.84	95,745,425
335	290,796	28,509.60	96,064,730
336	290,796	28,604.39	96,384,131
337	290,796	28,699.21	96,703,626
338	290,796	28,794.06	97,023,216
339	290,796	28,888.93	97,342,901
340	290,796	28,983.83	97,662,681
341	290,796	29,078.76	97,982,556
342	290,796	29,173.72	98,302,525
343	290,796	29,268.71	98,622,590
344	290,796	29,363.72	98,942,750
345	290,796	29,458.77	99,263,005
346	290,796	29,553.84	99,583,354
347	290,796	29,648.94	99,903,799
348	290,796	29,744.07	100,224,339
349	290,796	29,839.22	100,544,975
350	290,796	29,934.41	100,865,705
351	290,796	30,029.62	101,186,531
352	290,796	30,124.86	101,507,451
353	290,796	30,220.13	101,828,468
354	290,796	30,315.43	102,149,579
355	290,796	30,410.76	102,470,786
356	290,796	30,506.11	102,792,088
357	290,796	30,601.49	103,113,485
358	290,796	30,696.91	103,434,978
359	290,796	30,792.34	103,756,567
360	290,796	30,887.81	104,078,250

SOUTHWESTERN BELL TELEPHONE COMPANY  
COMMISSION DECISION REFUND METHODOLOGY  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Days	Daily Excess Dollars (Footnotes 1 & 2)	Daily Interest (Factor of 0.0296863% Footnote 3)	Accumulated Refund Dollars
361	\$290,796	\$30,983.31	\$104,400,030
362	290,796	31,078.83	104,721,905
363	290,796	31,174.39	105,043,875
364	290,796	31,269.97	105,365,941
365	290,796	31,365.58	105,688,103
366	290,796	31,461.21	106,010,360
367	290,796	31,556.88	106,332,713
368	290,796	31,652.57	106,655,161
369	290,796	31,748.30	106,977,705
370	290,796	31,844.05	107,300,346
371	290,796	31,939.83	107,623,081
372	290,796	32,035.64	107,945,913
373	290,796	32,131.47	108,268,840
374	290,796	32,227.34	108,591,864
375	290,796	32,323.23	108,914,983
376	290,796	32,419.16	109,238,198
377	290,796	32,515.11	109,561,509
378	290,796	32,611.08	109,884,916
379	290,796	32,707.09	110,208,419
380	290,796	32,803.13	110,532,019
381	290,796	32,899.19	110,855,714
382	290,796	32,995.29	111,179,505
383	290,796	33,091.41	111,503,393
384	290,796	33,187.56	111,827,376
385	290,796	33,283.74	112,151,456
386	290,796	33,379.94	112,475,632
387	290,796	33,476.18	112,799,904
388	290,796	33,572.44	113,124,272
389	290,796	33,668.74	113,448,737
390	290,796	33,765.06	113,773,298
391	290,796	33,861.41	114,097,956
392	290,796	33,957.79	114,422,709
393	290,796	34,054.20	114,747,560
394	290,796	34,150.63	115,072,506
395	290,796	34,247.10	115,397,549
396	290,796	34,343.59	115,722,689
397	290,796	34,440.11	116,047,925
398	290,796	34,536.66	116,373,258
399	290,796	34,633.24	116,698,687
400	290,796	34,729.85	117,024,213
401	290,796	34,826.49	117,349,835
402	290,796	34,923.15	117,675,554
403	290,796	35,019.84	118,001,370
404	290,796	35,116.57	118,327,283
405	290,796	35,213.32	118,653,292
406	290,796	35,310.10	118,979,398
407	290,796	35,406.91	119,305,601
408	290,796	35,503.75	119,631,901
409	290,796	35,600.61	119,958,297
410	290,796	35,697.51	120,284,791
411	290,796	35,794.43	120,611,381
412	290,796	35,891.38	120,938,069
413	290,796	35,988.36	121,264,853
414	290,796	36,085.37	121,591,735
415	290,796	36,182.41	121,918,713
416	290,796	36,279.48	122,245,788
417	290,796	36,376.58	122,572,961
418	290,796	36,473.70	122,900,231
419	290,796	36,570.86	123,227,598
420	290,796	36,668.04	123,555,062

SOUTHWESTERN BELL TELEPHONE COMPANY  
COMMISSION DECISION REFUND METHODOLOGY  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Days	Daily Excess Dollars (Footnotes 1 & 2)	Daily Interest (Factor of 0.0296863% Footnote 3)	Accumulated Refund Dollars
421	\$290,796	\$36,765.25	\$123,882,623
422	290,796	36,862.49	124,210,281
423	290,796	36,959.76	124,538,037
424	290,796	37,057.06	124,865,890
425	290,796	37,154.39	125,193,841
426	290,796	37,251.75	125,521,888
427	290,796	37,349.13	125,850,033
428	290,796	37,446.55	126,178,276
429	290,796	37,543.99	126,506,616
430	290,796	37,641.46	126,835,053
431	290,796	37,738.96	127,163,588
432	290,796	37,836.49	127,492,221
433	290,796	37,934.05	127,820,951
434	290,796	38,031.64	128,149,779
435	290,796	38,129.25	128,478,704
436	290,796	38,226.90	128,807,727
437	290,796	38,324.57	129,136,847
438	290,796	38,422.28	129,466,066
439	290,796	38,520.01	129,795,382
440	290,796	38,617.77	130,124,795
441	290,796	38,715.56	130,454,307
442	290,796	38,813.38	130,783,916
443	290,796	38,911.23	131,113,624
444	290,796	39,009.11	131,443,429
445	290,796	39,107.02	131,773,332
446	290,796	39,204.95	132,103,333
447	290,796	39,302.92	132,433,432
448	290,796	39,400.91	132,763,628
449	290,796	39,498.94	133,093,923
450	290,796	39,596.99	133,424,316
451	290,796	39,695.07	133,754,807
452	290,796	39,793.18	134,085,397
453	290,796	39,891.32	134,416,084
454	290,796	39,989.49	134,746,869
455	290,796	40,087.69	135,077,753
456	290,796	40,185.91	135,408,735
457	290,796	40,284.17	135,739,815
458	290,796	40,382.46	136,070,994
459	290,796	40,480.77	136,402,270
460	290,796	40,579.11	136,733,646
461	290,796	40,677.49	137,065,119
462	290,796	40,775.89	137,396,691
463	290,796	40,874.32	137,728,361
464	290,796	40,972.78	138,060,130
465	290,796	41,071.27	138,391,997
466	290,796	41,169.79	138,723,963
467	290,796	41,268.34	139,056,027
468	290,796	41,366.92	139,388,190
469	290,796	41,465.52	139,720,452
470	290,796	41,564.16	140,052,812
471	290,796	41,662.82	140,385,271
472	290,796	41,761.52	140,717,828
473	290,796	41,860.24	141,050,485
474	290,796	41,959.00	141,383,240
475	290,796	42,057.78	141,716,093
476	290,796	42,156.59	142,049,046
477	290,796	42,255.43	142,382,097
478	290,796	42,354.30	142,715,248
479	290,796	42,453.20	143,048,497
480	290,796	42,552.13	143,381,845

**SOUTHWESTERN BELL TELEPHONE COMPANY  
COMMISSION DECISION REFUND METHODOLOGY  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662**

<u>Days</u>	<u>Daily Excess Dollars (Footnotes 1 &amp; 2)</u>	<u>Daily Interest (Factor of 0.0296863% Footnote 3)</u>	<u>Accumulated Refund Dollars</u>
481	\$290,796	\$42,651.09	\$143,715,292
482	290,796	42,750.08	144,048,838
483	290,796	42,849.10	144,382,483
484	290,796	42,948.14	144,716,227
485	290,796	43,047.22	145,050,071
486	290,796	43,146.33	145,384,013
487	290,796	43,245.46	145,718,054
488	290,796	43,344.63	146,052,195
489	290,796	43,443.82	146,386,435
490	290,796	43,543.04	146,720,774
491	290,796	43,642.30	147,055,212
492	290,796	43,741.58	147,389,750
493	290,796	43,840.89	147,724,387
494	290,796	43,940.23	148,059,123
495	290,796	44,039.60	148,393,959

**TOTAL REFUND DOLLARS AS OF AUGUST 26, 1992** \$148,393,959

- Footnote 1: Daily excess dollars to day 73 are calculated from Period II ending June 30, 1991. The amount was calculated by dividing the Period II annual excess revenues of \$76,972,938 by the 365 days in a calendar year.
- Footnote 2: Daily excess dollars subsequent to day 73 are calculated from Period III ending on day 495 or August 26, 1992. The amount was calculated by dividing the Period III annual excess revenues of \$106,140,577 by the 365 days in a calendar year.
- Footnote 3: The interest on the refund is based upon the 11.41% return on equity allowance as ordered by the Commission. To allow for interest to accumulate at an annually compounded rate of 11.41% and to compute interest on daily refund balances the equivalent daily compounded rate of .000296863 was used for determining interest accruals.

SOUTHWESTERN BELL TELEPHONE COMPANY  
REVENUE, EXPENSE AND RATE BASE ADJUSTMENTS  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Line No.	Adjustment Description	COMMISSION DECISION		
		Revenues	Expenses	Rate Base
1	1989 Actual Results (Footnote 1)	\$568,394,327	\$444,830,039	\$857,678,021
2	Year-end Revenues:			
3	Local	\$997,777		
4	Toll	2,829,707		
5	Access	(1,047,135)		
6	Other	1,341,984		
7	Year-end Wage & Nonwage:			
8	Management Survey		0	
9	Non-management Survey		0	
10	Signing Bonus		(414,652)	
11	Other Wages		(2,833,214)	
12	Annualize Wages & Salaries	(133,575)	777,316	
13	Annualize Non-Wage Expense	0	0	
14	Payroll Taxes	0	332,043	
15	Pro Forma 1990 Non-Management wages	0	0	
16	Pro Forma 1990 Management Salaries	0	0	
17	Year-end Depreciation & Represcription	(522,735)	(4,496,324)	
18	Year-end Gross Receipts Tax		(13,145)	
19	Exclusion of Lobbying Expense		(624,128)	
20	Inclusion of Nonregulated Services	9,425,000	8,564,000	5,759,000
21	Maintenance of Service Charge (MSC)	0	0	0
22	Imputation of Yellow Page Operations	60,658,850	31,481,361	(Footnote 2)
23	Improved Mobile Telephone Service (IMTS)	(1,149,858)	(506,051)	(1,510,604)
24	Bellcore Dividends and Investment:			
25	Dividend/Investment		(369,318)	
26	ROE		0	
27	Project Disallowances		(1,669,000)	
28	Technology Resources Project Disallowances		(445,000)	
29	Prepayments/Materials and Supplies			(803,174)
30	Adjustment for Reciprocity Service	989,835	785,221	1,854,704
31	Exclusion of Aircraft Expense		(1,094,784)	
32	Amortization of Embedded \$200-\$500 Invest.	12,846	110,497	
33	1/2% State Sales Tax Increase	10,060	88,301	
34	End of Reserve Deficiency Amortization	(4,580,877)	(24,858,556)	(28,644,244)
35	1990 Basic Alloc. Factor (BAF) Phase-down		2,405,677	6,112,000
36	Optional Toll Calling Plan	0		
37	1990 Step of the COE CAT 3 Transition	226,578	1,408,292	3,182,353
38	7-1-90 CCL Rate Reduction	0		
39	1990 Impact of Toll Pool Stipulation	1,200,000		
40	End of Inside Wire Amortization	(1,123,675)	(8,578,903)	(6,408,066)
41	Uncollectible	(60,112)		

SOUTHWESTERN BELL TELEPHONE COMPANY  
REVENUE, EXPENSE AND RATE BASE ADJUSTMENTS  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Line No.	Adjustment Description	COMMISSION DECISION		
		Revenues	Expenses	Rate Base
42	SBC:			
43	Salary and Wage			
44	Allocation Factor		(819,806)	
45	Public Issues Research		(337,201)	
46	Marketing		(43,755)	
47	5th Anniversary Expenses		(354,797)	
48	Non-business Portion of Conference		(25,325)	
49	VINCE Project		0	
50	Common Look Project		(29,520)	
51	Custom Care Projects		0	
52	Executive and Exec. Support		(25,123)	
53	SBC Board of Directors		(1,836,000)	
54	Corporate Policy/Strategic Development		(147,000)	
55	SBC Cash Management		(346,000)	
56	Advertising:		(27,000)	
57	Corporate			
58	Product		(416,964)	
59	Advertising Salaries		(3,383,070)	
60	Customer Deposits		(217,928)	
61	Memberships and Dues		223,593	(2,478,125)
62	Remove Long-Term TPUC		(184,679)	
63	Wide Area Calling Plan (WACP)			(5,186,972)
64	Remove Artwork		0	0
65	Income Tax Adj. (Separation Factor Chg)			(106,651)
66	GAAP:			(10,594,186)
67	Pension (FAS 87)			
68	Compensated Absences		3,964,365	15,226,000
69	1991 Basic Alloc. Factor (BAF) Phase-down		(1,448,430)	
70	1991 Step of the COE CAT 3 Transition	0	0	0
71	Cash Working Capital:			
72	SWBT Formula Allowance			0
73	Staff Lead/Lag Study			0
74	AG Lead/Lag Study (excl. non-cash items)			(17,910,386)
75	7-1-91 CCL Rate Reduction	0		0
76	1991 Impact of Toll Pool Stipulation	0		
77	CO-OP Taxability	(787,400)		
78	Postal Rate Increase	0	0	
79	Debt Refinancing		0	
80	Minimum Cash Balances Required			3,236,516
81	Advance Payments			0
82	Internal Audit - Marketing Non-Reg.			
83	GHQ Prorate		(1,157,110)	
			(1,457,093)	



SOUTHWESTERN BELL TELEPHONE COMPANY  
REVENUE, EXPENSE AND RATE BASE ADJUSTMENTS  
T.Y.E. 12/31/89; CAUSE NO. PUD 000662

Line No.	Adjustment Description	COMMISSION DECISION		
		Revenues	Expenses	Rate Base
84	Net Compensation Study			
85	AT&T Reimbursements		(1,623,268)	
86	Ad Valorem Taxes		(180,826)	(723,306)
87	U.S. Olympic Festival		0	
88	Company Outing		(134,162)	
89	Antitrust Expenses		(28,492)	
90	Short-Term TPUC Disallowance		0	
91	Employee Concessions	547,449		(11,131,832)
92	CATS Revenue	0		
93	SBC Deferred Comp. Liability			(5,406,966)
94	GHQ Liabilities			(2,035,311)
95	GHQ Outstanding Drafts			(351,085)
96	Advance Payments			(29,634)
97	Service Improvement Investment		(343,505)	(3,305,349)
98	Royalties	1,161,000		
99	TOTAL ADJUSTMENTS	\$69,995,719	(10,329,463)	(61,255,319)
100	1989 Adjusted Results	\$638,390,046	\$434,500,576	\$796,422,702
101	Revenue Requirement Effect of Income Tax Difference (PLR)		\$0	
102	Non-361 Items		5,176	
103			\$434,505,752	

Footnote 1: Line 1 "1989 Actual Results" Revenues includes Other Operating Income & Expense of \$212,071.

Footnote 2: Line 22 "Imputation of Yellow Page Operations" - Rate Base Adjustments are incorporated into the Expense adjustment.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF ) CAUSE NO. FUD 000260  
HOWARD W. MOTLEY, JR., FOR AN INQUIRY )  
INTO THE EFFECT OF THE 1986 TAX REFORM )  
ACT ON OKLAHOMA UTILITIES. ) ORDER NO. 342343

HEARING: October 12, 1989 before the Commission en banc

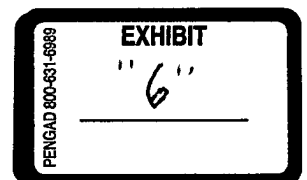
APPEARANCES: Maribeth D. Snapp, Deputy General counsel, on behalf of the Commission Staff.  
Glen A. Glass and George M. Makohin, Attorneys on behalf of Southwestern Bell Telephone Company.  
Eric R. King and Connie Mungle, Attorneys on behalf of the American Association of Retired Persons.  
Robert Butkin and Alice Mitchell, Attorneys on behalf of the Oklahoma Attorney General's Office.  
Ronald E. Stakem and C. K. Casteel, Jr., Attorneys on behalf of MCI Telecommunications Corporation.  
James Bramm, Attorney on behalf of citizens of Idabel and McCurtain County.

**ORDER REGARDING MOTIONS FOR MODIFICATION, RECONSIDERATION AND TO STAY AND ABATE ORDER NUMBER 341630**

BY THE COMMISSION:

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, this Cause comes on for consideration and action upon the Motion for Modification of Order Number 341630 filed by the Attorney General and the Motion for Reconsideration and to Stay and Abate Effect of Order filed by the American Association of Retired Persons ("AARP"). On September 20, 1989 the Commission issued its Order No. 341630 Regarding the Rates of Southwestern Bell Telephone Company. That order was corrected by Order No. 341820, Order Nunc Pro Tunc Concerning Southwestern Bell Telephone Company Rate Order No. 341630, dated September 27, 1989.

The Commission has carefully considered the motions of the Attorney General and AARP. The motion of the Attorney General contends 1) that the evidence does not support a depreciation reserve deficiency nor an amortization period of four years, 2) that the Commission erred in requiring Southwestern Bell Telephone Company ("SWBT") to pay interest at the one-year Treasury Bill rate for the period from July 1, 1987



through September 30, 1989, and 3) that the Commission erred by ordering SWBT to make central office upgrades instead of ordering cash refunds for the revenue excess amount remaining after the necessary costs of the party line elimination program. The Attorney General also contends that the amount of the revenue excess would be much greater if the Commission disallowed the amortization of the depreciation reserve deficiency.

The AARP contends 1) that the Commission erred by ordering party-line elimination and central office upgrades instead of ordering cash refunds, 2) that there was no substantial evidence to support a depreciation reserve deficiency and 3) that the Commission erred when it ordered an interest rate of 8.21% on the revenue excess for the period from July 1, 1987 to September 30, 1989.

The Commission notes that these same arguments were presented on more than one occasion by these parties prior to the issuance of Order No. 341630. There is nothing new in the arguments presented. The Commission finds that as to each of the contentions of the Attorney General and AARP, there is substantial evidence to support the Commission's order.

With respect to the depreciation reserve deficiency, the Commission notes that the Staff had significant participation in the Three-Way Meeting process which established new depreciation rates for SWBT in 1986. The testimony and exhibits of Staff Witness Wilt reflect that Oklahoma specific data was presented during the Three-Way Meeting between the FCC Staff, the Commission Staff and SWBT. A summary of the proceedings that took place is also contained in FCC Order No. 86-603, which was sponsored as an exhibit by Mr. Wilt. The Commission is not required by the FCC to accept the amount of the depreciation reserve deficiency figure. However, in this case the Commission adopted the results of the Three-Way Meeting and the depreciation reserve deficiency because of the Staff's participation in the depreciation review process. The process by which we have handled the depreciation issues historically promotes uniformity between the interstate and intrastate

jurisdictions, and allows the Commission Staff to utilize the resources of the FCC in the Staff's review of this item.

Depreciation is an appropriate expense for rate-making purposes. Depreciation levels and rates are set based on the lives of the related investments. It is clear from the record that the depreciation reserve was too low because of changes in technology and obsolescence of plant. Further, this deficiency in depreciation reserve, unless corrected, would result in millions of dollars locked into plant under the Uniform System of Accounts and the ratepayers paying for it from now on. Therefore, the proper way to solve this dilemma is to eliminate the depreciation reserve deficiency by amortizing it on an annual basis. The benefit is that each year the rate base is reduced and, after the four year amortization period, there is no additional expense to the ratepayer. More importantly, in the long run there is a substantial savings to the ratepayer by amortizing this deficiency, resulting in a lower rate base and a lower revenue requirement.

The Commission also notes that during the hearings in this case neither the Attorney General's nor AARP's witnesses submitted any testimony whatsoever rebutting the Staff's position on the existence of the depreciation reserve deficiency.

With respect to the issue of interest, all parties contesting the issue submitted legal briefs. The Commission finds that it has discretion concerning the appropriate rate of interest to be charged on the revenue excess and although the Commission believes that it had the jurisdiction to adopt a compound rate of interest based on a one-year Treasury Bill rate for the period from July 1, 1987 to September 30, 1989, the Commission, upon reconsideration, finds that instead of adopting two different interest rates for the revenue excess, that it would be appropriate to have only one interest rate. Therefore, the Commission finds that Order No. 341630 should be modified to require that the revenue excess shall also accrue interest from July 1, 1987 to September 30, 1989 at the rate of 11.589%, compounded annually.

AARP has argued that the Commission has ignored Title 17, Section 121 et seq. of the Oklahoma Statutes, in ordering service upgrades instead of a refund. However, as pointed out in the brief of the Commission Staff, absent the stipulation, the Commission would be unable to order a refund because Southwestern Bell was charging their authorized tariffed rates at all times in question. Title 17, Oklahoma Statutes, Section 121, et seq. reads:

The Corporation Commission is hereby vested with the power of a court of record to determine: First, the amount of refund due in all cases where any public service corporation, person, or firm, as defined by the Constitution, charges an amount for any service rendered by such public service corporation, person, or firm, in excess of the lawful rate in force at the time such charge was made, or may thereafter be declared to be the legal rate which should have been applied to the service rendered; and, second, to whom the overcharge should be paid. (emphasis added).

This statute is not applicable to this situation because Southwestern Bell charged its authorized tariffs during the pendency of the TRA review by this Commission. In the case of Atchison T.&S.F. RY Co. et al. v. State et al., 206 P. 236 (Ok1. 1922), the Supreme Court interpreted the portion of 17 O.S. §121 that reads "or may thereafter be declared to be the legal rate which should have been applied to the service rendered" to be applicable to a situation where the railroad company had charged rates which had not been authorized by the Commission.

The Supreme Court in the case of St. Louis-San Francisco RY. Co. et al. v. State et al., (Ok1. 1932) specifically determined that 17 OS §121 does not authorize a refund if the utility is charging the authorized rate, even if the Commission later decides the rate was excessive for some reason. Therefore, even if the Commission had been able to determine what specific rates caused an overcollection of revenues, in light of the TRA, the Commission may not retroactively order those rates to be reduced and a refund given, pursuant to 17 O.S. §121.

With respect to the rate design in the form of service and central office improvements ordered by the Commission, neither the Attorney

General nor AARP have presented anything not argued by them prior to the issuance of the order. The Commission also notes that the Attorney General does not appear to object to the party-line elimination program. The record is replete with evidence of the impossibility of identifying the customers to whom any revenue excess would be owed, as well as establishing on any equitable basis the amounts owed.

More importantly, as a matter of policy, this Cause presents a unique opportunity to accomplish service and central office upgrades in a manner which eliminates any adverse impact on basic exchange rates and any burden on ratepayers. When the upgrade required by this Commission is completed, the state of Oklahoma will have one of the most modern, up-to-date telephone systems in the Southwest. Modern forms of communication will be available to residences, and large and small businesses in the exchanges which are upgraded.

The evidence of the Staff, through Mr. Burnett, Mr. Motley and Mr. Schroeder, supports the Commission's ordering of the service improvement program. The figures submitted by the Staff as the cost of service improvements were un rebutted. Concern was expressed that SWB might somehow receive a windfall of any funds which might remain after the multiparty party and central office upgrades are completed.

As Order No. 341630 provided, SWBT shall submit quarterly reports as to the costs and progress applicable to the service improvement programs. The Commission realizes that all expenditures necessary to implement both the party-line elimination program and central office upgrades may be more or less than contained in Exhibit SWB-85 (WHB-5). The Staff is directed, at the completion of the three-year service improvement programs, as set forth in Exhibit SWB-85, to report to the Commission as to whether or not the expenditures for service improvements exceeded the revenue excess, plus applicable interest. Should there be any remaining amounts not expended by SWBT on projects set forth in Exhibit SWB-85, such amounts will be subject to reinvestment or other disposition by further order of this Commission.


ORDER

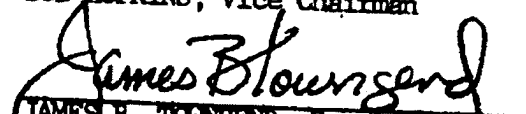
IT IS THEREFORE THE ORDER OF THE COMMISSION that the rate of interest applied to the revenue excess from July 1, 1987 to October 1, 1989 be amended in Order 341630 to the rate of 11.589%, compounded annually.

IT IS FURTHER ORDERED that the Motion for Modification of Order Number 341630 presented by the Attorney General and the Motion for Reconsideration and to Stay and Abate the Effect of Order presented by the AARP are denied.

CORPORATION COMMISSION OF OKLAHOMA

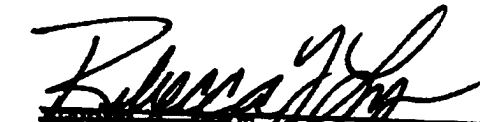
Concurs in Part, Dissents in Part;  
Separate Opinion Attached  
BOB ANTHONY, Chairman

  
BOB HOPKINS, Vice Chairman

  
JAMES B. TOWNSEND, Commissioner  
Specially Concurs;  
Separate Opinion Attached.

DONE AND PERFORMED this 19th day of OCTOBER, 1989.

BY ORDER OF THE COMMISSION:

  
REBECCA J. LYNN, ACTING  
Secretary

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

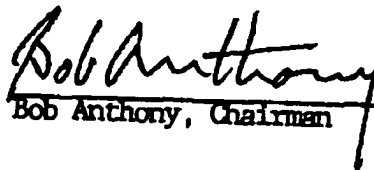
IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MOTLEY, JR., FOR AN INQUIRY )  
INTO THE EFFECT OF THE 1986 TAX REFORM )  
ACT ON OKLAHOMA UTILITIES. )

CAUSE NO. PUD 000260

ORDER NO 342343

ANTHONY, BOB, Chairman, Concurring in part and Dissenting in part:

I concur with the decision of the majority to increase the interest rate from 8.21% to 11.589% for the period of July 1, 1987 to September 30, 1989. I also concur with the majority's decision to direct the Commission Staff to advise the Commissioners at the conclusion of the service and central office upgrades of any unexpended funds so the Commission can give further direction concerning their disposition. I must, however, respectfully dissent from the remainder of the majority's order because as I stated in my dissenting opinion filed September 27, 1989, I believe some or all of the excess revenues should be refunded to the broad base of telephone customers.

  
Bob Anthony, Chairman



BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF }  
HOWARD W. MOTLEY, JR., FOR AN INQUIRY }  
INTO THE EFFECT OF THE 1986 TAX REFORM }  
ACT ON OKLAHOMA UTILITIES. }

CAUSE NO. PUD 000260

ORDER NO **342343**

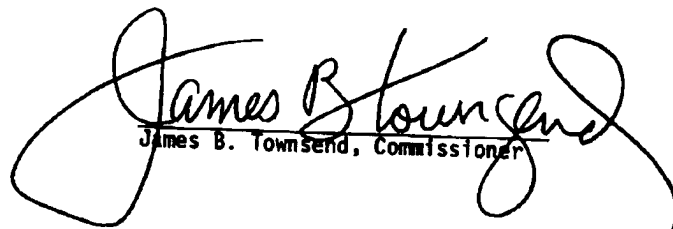
TOWNSEND, JAMES B., Commissioner, specially concurring.

I specially concur with the majority position which in final form provides benefits to every ratepayer on Southwestern Bell's system, bringing closer to reality the concept of universal service within the boundaries served by Southwestern Bell Telephone Company, reducing all multi-party service to single-party service, and reducing mileage charges for those who live outside the telephone base rate area 50% as of October 1, 1989. When upgrades of service are completed, the maximum mileage charge will be reduced to \$3.85. It also places 911 service within reach of every citizen served by Southwestern Bell (with required community action), a benefit of great value to members of AARP and other senior citizens.

When the communication upgrades directed by this order become a reality within the mandated 3-year period, Oklahoma will rank in the top 3 states in terms of modern communications, providing improved service at reduced prices to residential customers and existing industrial customers. Modern telecommunications technology in the central offices serving small and middle sized communities within the Southwestern Bell system will provide an opportunity to compete for new industrial growth, will diversify our industrial base, and improve Oklahoma's economy through the creation of new jobs.

Contrary to the statements of AARP that the Commission, by this order, is allowing Southwestern Bell to receive a windfall of ratepayer money, the truth is Southwestern Bell is being required to utilize this money to benefit all the ratepayers through greatly improved services without an associated rate increase to reflect the investment required.

Through this order, the public can be assured that not one penny from the windfall of the tax reduction will go into the back pocket of the stockholders of Southwestern Bell and will in fact improve the economic opportunities of Oklahoma through improved communications for every citizen of the state.

  
James B. Townsend, Commissioner

BEFORE THE CORPORATION COMMISSION  
OF THE STATE OF OKLAHOMA

APPLICANTS: HONORABLE SODY CLEMENTS, )  
an Individual and Oklahoma Resident on behalf of )  
herself and others similarly situated; LT. GENERAL )  
(Ret.) RICHARD A. BURPEE, an Individual and )  
Oklahoma Resident on behalf of himself and others )  
similarly situated; JAMES PROCTOR, an Individual and )  
Kansas Resident on behalf of himself and others )  
similarly situated; RODD A. MOESEL, an Individual and )  
Oklahoma Resident on behalf of himself and others )  
similarly situated; RAY H. POTTS, an Individual and )  
Oklahoma Resident on behalf of himself and others )  
similarly situated; BOB A. RICKS, an Individual and )  
Oklahoma Resident on behalf of himself and others )  
similarly situated. )  
)  
RELIEF SOUGHT: VACATE OR MODIFY OKLAHOMA )  
CORPORATION COMMISSION ORDER )  
No. 341630 CAUSE No. PUD 260; AND )  
REDETERMINE ISSUES FOLLOWING )  
INTRINSIC FRAUD. )

**AFFIDAVIT OF JAMES M. PROCTOR**

I, JAMES M. PROCTOR, of lawful age and being of sound mind, do hereby state under oath the following facts personally known to me to be true and correct.

1. I have a BBA from Washburn University (1978) and an MBA from the University of Kansas (1984). I have over thirty years of experience in utility regulation matters, including experience in regulating public utility companies for two state utility commissions and as a regulatory consultant to state regulatory agencies; and, as a consultant to regulated utilities and utility subsidiaries, affiliates and partnerships.

2. **From 1990 to 1993, I served as the Director of the Public Utility Division, Oklahoma Corporation Commission.** Because of my role and involvement in the regulatory matters before the



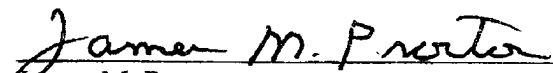
Oklahoma Corporation Commission ("Commission" or "OCC"), I have extensive knowledge of events, circumstances, details and complexities of the Causes No. PUD 860000260 ("PUD 260") and No. PUD 890000662 ("PUD 662") which pertain to Southwestern Bell Telephone Company ("SBTC") rates. I was directly involved in such matters. As Director of the Commission's Public Utility Division, I was the person most responsible for preparing testimony on policy and significant regulatory issues, directing and supervising the preparation of Public Utility Division Staff testimony, the preparation of legal briefs, advising the Commissioners in their deliberative process, preparing proposed findings, conclusions and proposed orders and preparing the Commission Orders in relation to these matters including the Final Commission Order in PUD 662.

3. Based on my extensive knowledge gained from working on the issues, I can affirmatively state that the original determination in the PUD 260 case was fundamentally flawed, unreasonable and unfair to SBTC's Oklahoma ratepayers. On August 26, 1992, after extensive discovery, 37 days of witness testimony and lengthy hearings, the OCC unanimously approved its rate making Order in PUD 662, Order No. 367868, which established SBTC's revenue excess to be more than \$100 million, annually, based upon the complete test year 1989. That (unanimous) determination was based on an extensive record of evidence and actual historic data (not estimates) and was fairly determined by an unbribed Commission. **This amount of revenue excess is well more than ten (10) times higher than the 1989 "excess revenue" determination made in the bribed PUD 260 Order, which itself was based on incomplete data and estimates.** Applying the approved 11.589% compounded annual interest rate as established in Commission Order No. 342343 to the annual revenue excess as determined from using the findings in the valid (unanimous) Commission Order No. 367868 for the years 1989 forward, I have calculated that SBTC's Oklahoma ratepayers are due the total sum of nearly **\$16 billion**, that is, precisely \$15,850,594,773 as of September 30, 2015. This total amount owed to

Oklahoma ratepayers includes \$13,114,255,238 of interest charges. Such total refund amount could provide more than \$15,000, on average, for each Oklahoma SBTC telephone number, accumulated over the period beginning in 1987 and continuing on through the date refunds are implemented by the Commission from issuing a valid order in PUD 260.

4. In my professional opinion, it is a high likelihood if not near certainty that, upon the OCC's (unbribed) determination of PUD 260, SBTC's Oklahoma ratepayers would be found to be entitled to a substantial "refund" of SBTC's excess revenue collections. Indeed, the result in the OCC's PUD 662 case evidences that PUD 260 was not fairly, justly or reasonably determined for Oklahoma telephone ratepayers.

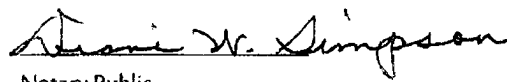
FURTHER AFFIANT SAYETH NAUGHT!

  
James M. Proctor

State of Kansas        )  
                              ) ss  
Douglas County )

Sworn before me as true and correct this 8<sup>th</sup> of September, 2015.



  
Notary Public

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

**FILED**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 WILLIAM L. ANDERSON, and )  
 )  
 ROBERT E. "BOB" HOPKINS, )  
 )  
 Defendants. )

NOV 03 1994  
ROBERT D. DENNIS, CLERK  
U.S. DIST. COURT, WESTERN DIST. OF OKI  
BY \_\_\_\_\_, DEPUTY

No. CR-93-137-A

GOVERNMENT TRIAL BRIEF

**BOOKED**

INTRODUCTION

The Government's evidence will show the existence of a conspiracy to influence the vote of Oklahoma Corporation Commissioner Robert E. Hopkins on a pending action known as PUD-260. Count 1 of the Indictment charges Hopkins with agreeing to accept something of value, intending to be influenced or rewarded, while Count 2 charges defendant William L. Anderson with offering something of value, with intent to influence or reward Hopkins in connection with the PUD-260 vote. Count 1 is a violation of Title 18, United States Code, Section 666(a)(1); Count 2 is a violation of Title 18, United States Code, Section 666(a)(2) and Section 2.

The crime was discovered in mid-1990 during a conversation between Anderson and Commissioner Robert Anthony, who was cooperating in an FBI investigation. Anderson confided to Anthony that money had been paid to Commissioner Hopkins in connection with his vote; subsequent conversations provided additional details, including the identity of other participants.

PENGAD 800-831-6889  
**EXHIBIT**  
"8"  
\_\_\_\_\_

198

The Government's evidence will show that the conspiracy to pay the bribe began in early September, 1989, and ended in early May, 1990, when the last funds were paid. Defendant Hopkins joined in the conspiracy by agreeing to accept a reward in connection with the performance of his official duties, and thus statements made by other co-conspirators, during the course of the conspiracy, are admissible against him to prove that he agreed to, and did accept a thing of value.

Statements made by Anderson to Anthony and others, against his own penal interests and implicating Hopkins, will also be offered by the Government against both defendants, and are admissible to prove the allegations of the crime itself, pursuant to Federal Rule of Evidence 804(b)(3).

In March 1991, when the FBI investigation was near completion, a second conspiracy, to obstruct the investigation into the commission of the crimes charged in Counts 1 and 2, began. Although Anderson is charged, this conspiracy has been severed for purposes of trial; nevertheless, evidence of this crime will be offered by the Government to prove both defendants' consciousness of guilt as to Counts 1 and 2. Hopkins became a co-conspirator during conversations with Anderson where he sought an agreement from Anderson not to reveal the facts, agreed with Anderson that neither would talk to the FBI if approached but would instead meet and confer between themselves, and later implicitly agreed on a false exculpatory version of the events surrounding the PUD-260 vote.

## I. CO-CONSPIRATOR HEARSAY

### A. The Conspiracy Need Not be Charged To Trigger Availability of Rule 801(b)(2)(E) for the Admission of Co-conspirator Hearsay Statements

The declarant of the co-conspirator hearsay statement does not need to be an indicted co-conspirator for the statement to be admissible under Rule 801(d)(2)(E). United States v. Adkins, 842 F.2d 210, 213 (8th Cir. 1988). In fact, statements of partners in a criminal joint venture are admissible even when a conspiracy has not been charged at all. United States v. Blankenship, 954 F.2d 1224, 1230 (6th Cir., cert. denied, \_\_\_ U.S. \_\_\_, 113 S.Ct. 288, 121 L.Ed.2d 213 (1992)).

Whether or not a conspiracy has been charged, such statements are admissible if the district court finds that "it is more likely than not that the declarant and the defendant were members of a conspiracy when the hearsay statement was made, and that the statement was in furtherance of a conspiracy."

United States v. Ortiz, 966 F.2d 707, 715 (1st Cir. 1992), cert. denied, \_\_\_ U.S. \_\_\_, 113 S.Ct. 1005, 122 L.Ed.2d 154 (1993), citing United States v. Petrozziello, 548 F.2d 20, 23 (1st Cir. 1977).

In United States v. Buchanan, 787 F.2d 477, 482 (10th Cir. 1986), the Tenth Circuit held that the uncharged conspiracy does not even have to be a "federal conspiracy," ruling that hearsay declarations regarding an arson conspiracy were properly admitted under Rule 801(d)(2)(E). See United States v. Magnuson, 680 F.2d 456, 58 (8th Cir. 1982), cert. denied, 494 U.S. 1088, 110 S.Ct. 182, 108 L.Ed.2d 958 (1990). See also United States v. Dworken, 855 F.2d 12, 24 (1st Cir. 1988) ("the existence of the

particular conspiracy charged in the indictment [was] not necessary for the admission of co-conspirator statements"); United States v. Trowery, 542 F.2d 623, 627 (3rd Cir. 1976), cert. denied, 429 U.S. 1104, 97 S.Ct. 1132, 51 L.Ed.2d 555 (1977) ("absence of a conspiracy count has no bearing on the court's determination of the competence of co-conspirator evidence.")

In United States v. Potts, 840 F.2d 368, 371-72 (7th Cir. 1987) the defendant was not charged with a conspiracy, but much of the evidence against him came from an inmate who testified as to conversations he had had with defendant's co-conspirator inside the prison. These statements were properly admitted as co-conspirator statements because the statements included defendant's prison drug "service," how much was owed him, how he was to be paid, and how he could help in the future.

The Government intends to offer evidence that a conspiracy between William L. Anderson and others began at a meeting at Applewood's Restaurant in the early part of September, 1989. The plan involved enlisting a third party to approach and influence Oklahoma Corporation Commissioner Robert E. Hopkins in connection with his vote on PUD 260, a matter then pending before the Commission. In furtherance of that conspiracy, Anderson called Michael R. Murphy, asked him to approach and offer Hopkins \$10,000 if the Commissioner voted for the position advanced by Anderson. Murphy (now a government witness) also received a telephone call from Jewel Callaham, who told Murphy that he had \$5,000 more for Hopkins in the event of such a vote. Murphy agreed to act as the "go-between" or "bagman" between the Anderson/Callaham duo and Commissioner Hopkins.



Within days, Murphy contacted Hopkins and advised that Anderson and Callaham had \$15,000 that he and Hopkins could "split" if Hopkins would vote for "reinvestment" in the PUD 260 case. At this time, on or about September 18, 1989, Hopkins joined the conspiracy when he agreed to the offer.

Actions and statements by Anderson and Callaham to meet with and pay Murphy were in furtherance of the conspiracy and are admissible against Anderson and Hopkins, then members of the conspiracy. This conspiracy continued to on or about May 9, 1990, when Anderson met with Murphy and wrote him a \$500 check, advising that Hopkins had directed the balance of the money due be paid to Hopkins' son.

A second conspiracy began on or about March 13, 1991, after the FBI, in a planned strategy, began to confront many of the players in the initial scheme. The Government's evidence will establish that on or about March 13, 1991, Commissioner Anthony, cooperating in the investigation, confronted Hopkins about allegations concerning improper influence by Anderson of Hopkins in connection with the PUD-260 matter. Although denying the allegations to Anthony, he attempted to contact Bill Anderson within an hour and a half. Anderson and Hopkins talked the evening of March 13, 1991, and Hopkins told Anderson that the two of them had a very serious problem that needed to be discussed personally early the following morning. In a conversation on the 14th, while referring to the allegations of Anthony, Hopkins refused to discuss specifics over the phone and instructed Anderson not to talk to anyone else.

The Government's evidence will establish that on or about March 14, 1991, Callaham contacted defendant Anderson and advised him of the presence of FBI agents in his office inquiring about "the Applewood deal." Almost immediately after this conversation, Anderson contacted Hopkins, advised him of the existence of a "hot" FBI investigation, attempted to set up a meeting, and agreed with him not to discuss the matter with investigators.

In later conversations that evening, Callaham agreed to call Murphy and tell him "not to say much," and Anderson contacted others having knowledge of the scheme. These conversations by Anderson with others, including Hopkins, served to spread, refine and perpetuate a concocted story and enlist the cooperation of others in the plan to impede the investigation. Hopkins actively participated by impliedly agreeing that the false statements should be given the FBI, and by calling Murphy to recite the false statement to him in late April, 1991.

As both defendants Hopkins and Anderson became members of the conspiracy, the statements spreading, refining, and perpetuating the false story were made in furtherance of the conspiracy and are probative of defendants' consciousness of guilt on Counts 1 and 2, and are admissible against both defendants.

#### **B. Predicate for Admission**

Co-conspirator hearsay statements are properly admitted if the Government establishes by a preponderance of the evidence that: (1) a conspiracy existed, (2) the declaration is by the defendant or other member of the conspiracy, and (3) the statement was made in the course and in furtherance of the objects of the

conspiracy. United States v. Petersen, 611 F.2d 1313, 1330 (10th Cir. 1979), cert. denied, 447 U.S. 905 (1980); United States v. Davis, 766 F.2d 1452, 1457 (10th Cir.), cert. denied, 474 U.S. 908, 106 S.Ct. 239, 88 L.Ed.2d 240 (1985).

There is no requirement of "independent evidence" to establish the conspiracy. Bourjaily v. United States, 107 U.S. 2775, 2781 (1987). There the Supreme Court held that "a court, in making a preliminary factual determination under Rule 801(d)(2)(E), may examine the hearsay statements sought to be admitted."

The evidentiary standard now followed by the Tenth Circuit was enunciated in United States v. Brown, 943 F.2d 1246, 1254 (10th Cir. 1991), rev'd on other grounds, and United States v. Mobile Materials, Inc., 881 F.2d 866, 869 (10th Cir. 1989). These Tenth Circuit cases hold that a trial court may consider independent evidence as well as the hearsay statements themselves.

The appropriate procedure to be followed by the court at trial in making the determination of admissibility is to consider a proffer by the United States, if needed, of evidence as it relates to the conspiracy. This will obviate the necessity of conducting a full pretrial evidentiary hearing. This would allow the United States to present evidence at trial, in a logical, cogent fashion, regarding statements made by the alleged co-conspirators, subject to being connected under Fed. R. Evid. 104. This practice has been specifically approved by the Tenth Circuit. See United States v. Rivera, 778 F.2d 591, 594-96 (10th Cir. 1985), cert. denied, 475 U.S. 1068, 106 S.Ct. 1384, 89 L.Ed.2d 609 (1986).

So long as the declarant and the party against whom the statement is offered in court were members of a conspiracy, any

witness who heard the statement may recount it at trial, whether the statement was made to a conspiracy member or not, and regardless of whether the witness was a member of the conspiracy. For instance, statements to a government informant who never intended to aid in a conspiracy is admissible so long as the declarant and another had joined in concert prior to the statement. United States v. D'Antoni, 874 F.2d 1214, 1218 (7th Cir. 1989); United States v. Beech-nut Nutrition Corp., 871 F.2d 1181, 1198 n.99 (2nd Cir. 1989).

**C. All Co-conspirators Are Responsible for All Acts and Statements Made in Furtherance of the Conspiracy Regardless of Time of Joining**

Statements made by Anderson, Callaham, Murphy, and others, organizing the conspiracy and furthering its objects, prior to the actual acceptance by Hopkins of Anderson's offer, are admissible against both defendants. Once a conspiracy is established, statements and acts in furtherance, even though made or done prior to the joining of some to the conspiracy, become admissible against all as declarations or acts of co-conspirators in aid to the conspiracy. United States v. United States Gypsum Co., 333 U.S. 364, 393 (1948). This means that statements made by co-conspirators, in furtherance of the conspiracy, are admissible against a defendant even though made prior to the defendant's involvement in the conspiracy. United States v. Masse, 816 F.2d 805, 810-11 (1st Cir. 1987).

As noted in United States v. Adamo, 882 F.2d 1218, 1230 n.31 (7th Cir. 1989), one "who joins a conspiracy [takes] the conspiracy as he found it. When he joined and actively

participated in it he adopted the previous acts and declarations of his fellow co-conspirators."

In United States v. Brown, 943 F.2d 1246 (10th Cir. 1991), cert. denied, 112 S.Ct 1745 (1992), the defendant claimed that hearsay statements of two co-conspirators should not have been admitted against him since he was not a member of the conspiracy when the statements were made. The Tenth Circuit noted the "prevailing view" among the circuits, that previous statements made by co-conspirators are admissible against a co-defendant who subsequently joins the conspiracy. They held: "We join in that holding. The fact that appellant may have joined the conspiracy after its inception does not make his co-conspirators' previous statements inadmissible." Brown, 943 F.2d at 1255. Thus, the statements or acts made or done by any co-conspirator prior to Hopkins joining either the conspiracy to influence and be influenced, or the conspiracy to obstruct the investigation, are admissible against him.

The statements made during the first conspiracy are those primarily of Anderson and Callaham recruiting Murphy to play a role in the presentation of the scheme to Commissioner Hopkins. Statements recruiting accomplices are "in furtherance," United States v. Turner, 871 F.2d 1574, \_\_\_ (11th Cir. 1989). Statements made by Hopkins to Murphy accepting the offer, and warning Murphy of the consequences of a lack of secrecy, are admissible against Anderson as in furtherance of the conspiracy. All are probative as to Counts 1 and 2 to show preparation, intent, and to clearly and fully set out the circumstances of the conduct.

Statements sought to be admitted under the second conspiracy are those made by Anderson and Hopkins to others during the development and perpetuation of the false statement to be given the FBI. These are admissible against all co-conspirators, and are probative of a consciousness of guilt as to Counts 1 and 2.

Because of the unusual nature of Commissioner Anthony's role, the Government may introduce evidence of the second conspiracy earlier in the trial than evidence of the first conspiracy. While Anthony was cooperating with the FBI in its investigation, Anderson sought to enlist him in the conspiracy to obstruct the investigation by advising him what others had been telling the FBI and telling him what to say if contacted, even though Anthony had had no involvement in the bribery of Hopkins.

Evidence of the first conspiracy will come in through a member of that conspiracy, Mike Murphy, who will testify relatively early in the Government's case-in-chief. He will relate statements made to him by Anderson refining the false exculpatory statement, and that Hopkins called him and recited the false exculpatory story. All statements by these members of the second conspiracy are admissible against the defendants to show a consciousness of guilt as to Counts 1 and 2.

These statements are narratives of past events which do not qualify for admission under the co-conspirator exception to the hearsay rule. See: United States v. Wolf, 839 F.2d 1387, 1393 (10th Cir. 1988) [narratives are statements relating past events, even those connected with the operation of the conspiracy, which serve no immediate or future conspiratorial purpose]. The

statements are admissible, however, as statements against penal interest under Fe 804(b)(3).

II. STATEMENTS AGAINST PENAL INTEREST BY CO-DEFENDANT

Rule 804(b)(3) provides that:

(b) The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

. . .

(3) A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, . . . that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

The Government intends to introduce tape-recorded admissions by defendant Anderson to Commissioner Anthony, who was cooperating with the Government and recording their conversations. During their many contacts, Anderson made significant inculpatory statements and described the payoff of Hopkins through Murphy with regard to the PUD 260 case. During the Title III portion of the investigation, Anderson made inculpatory admissions to others, which will also be introduced. Admission of these statements is governed by Rule 804(b)(3), Fed. R. Evid., commonly referred to as the statement-against-interest exception to the hearsay rule.

On numerous occasions, Anderson admits that he enlisted Murphy to contact Hopkins and promise Hopkins money in exchange for his vote on the PUD 260 issue. He confides that it was in fact done, and makes numerous detailed statements about the manner in

which the money was delivered to Murphy to deliver to Hopkins. Ruling on the admissibility of Anderson's statements against Hopkins requires an analysis of the applicability of the Confrontation Clause and the hearsay rule.

Bruton v. United States, 391 U.S. 123 (1968), holds that the Sixth Amendment confrontation right of a defendant is violated if a nontestifying co-defendant makes a confession that implicates the defendant, and the government introduces the confession into evidence at their joint trial. In dealing largely with the effectiveness of limiting instructions, Bruton provides no authority for excluding the statements sought to be admitted here, as Anderson's statements are not confessions to a law enforcement official as was in Bruton, but are non-custodial, non-coerced admissions by Anderson, admissible against him and his co-defendant Hopkins.

The Tenth Circuit has previously noted that Bruton's scope was limited and that testimony admissible under the conspiracy exception falls outside its ambit. United States v. Roberts, 583 F.2d 1173, 1175 (10th Cir. 1978), cert. denied, 439 U.S. 1080, 99 S.Ct. 862, 59 L.Ed.2d 49 (1979). The Tenth Circuit has also directed that admissibility of a confession of a co-defendant, as substantive evidence against a defendant, should be analyzed as set forth in Lee v. Illinois, 476 U.S. 530 (1986), rather than Bruton. United States v. Hill, 901 F.2d 880, 883 n.1 (10th Cir. 1990). In Lee, the state sought to use hearsay evidence, a confession by an accomplice, as substantive evidence against the accused. The Court recognized the potential applicability of its decision in Ohio v. Roberts, 448 U.S. 56



(1980), but found that the circumstances contained neither a firmly-rooted hearsay exception, nor particularized guarantees of trustworthiness. Lee, 476 U.S. at 543-44.

In Bourjaily v. United States, 483 U.S. 171, 181-182 (1987), the Supreme Court rejected a defendant's Confrontation Clause argument regarding admission of co-conspirator hearsay. The Court noted that the co-conspirator exception to the hearsay rule was firmly enough rooted in U.S. jurisprudence that a court need not independently inquire into the reliability of such statements; the fact that the statements were co-conspirator hearsay rendered them admissible.

The Seventh Circuit has explicitly held that the statement-against-penal-interest exception to the hearsay rule [804(b)(3)] is firmly established and well-rooted within the meaning of Ohio v. Roberts, 448 U.S. 56 (1980), and Bourjaily v. United States v. York, 933 F.2d 1343, 1363 (7th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 112 S.Ct. 321, 116 L.Ed.2d 262 (1991). In analyzing the admissibility of out-of-court statements sought to be admitted under that rule, the Seventh Circuit has adopted a three-part test for admissibility: (1) the declarant's statement was against his penal interest; (2) corroborating circumstances indicate its trustworthiness; and (3) the declarant is unavailable. United States v. Gio, 7 F.3d 1279-1288 (7th Cir. 1993). Gio objected to the admissibility of tape recorded conversations between a cooperating defendant and a co-defendant in which Gio was implicated. The court found that the statements by Gio's co-defendant were clearly against his penal interests, and that his status as a defendant rendered him unavailable. Trustworthiness

was established by the presence of independent corroborating evidence and the lack of motivation to lie. Gio, 7 F.3d at 1288.

In United States v. York, 933 F.2d 1343, 1360 (7th Cir.), cert. denied, \_\_\_ U.S. \_\_\_, 112 S.Ct. 321, 116 L.Ed.2d 262 (1991), the defendant York had conspired with a woman named Maher to blow up a jointly-owned lounge. At trial, two associates of Maher (killed in the explosion) testified that the decedent had told them that she and York had planned to blow up the lounge to collect the insurance proceeds. The circuit court found that statements that tend to implicate the declarant in a conspiracy are against his penal interests, citing United States v. Layton, 720 F.2d 548, 560 (9th Cir. 1983), cert. denied, 465 U.S. 1069, 104 S.Ct. 1423, 79 L.Ed.2d 748 (1984), and statements that demonstrate a declarant's inside knowledge of a crime are also against the declarant's penal interest. Id.; United States v. Barrett, 539 F.2d 244, 252 (1st Cir. 1976). The York court found the circumstances surrounding Maher's statement "imminently trustworthy" because they were made to acquaintances unconnected to law enforcement.

The foundational case for modern evidentiary rulings defining the relationship between the Confrontation Clause and the hearsay rule with its many exceptions is Ohio v. Roberts, 448 U.S. 56 (1980), dealing with the admissibility at trial of testimony from a preliminary hearing when the witness could not be found at time of trial.

When overcoming the Confrontation Clause objection to otherwise admissible hearsay, the prosecution must produce or demonstrate unavailability of the declarant. Once the witness is unavailable, the clause permits the admission of only such hearsay

as bears adequate indicia of reliability. Ohio v. Roberts, 448 U.S. at 65-66.

The first prong of the test, unavailability, is met because while Anderson and Hopkins are literally "produced" in court, their rights not to testify against themselves make each effectively unavailable for cross-examination by the other. Douglas v. Alabama, 380 U.S. 415, 419 (1965). Former defendant Callahan is practically unavailable due to the presence of unresolved criminal charges and advice from his attorney that he will refuse to testify if called.

The second prerequisite imposed by the Confrontation Clause, reliability, can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception"; those exceptions rest on such solid foundations that admission of virtually any evidence within them comports with the substance of the constitutional protection. Ohio v. Roberts, 448 U.S. at 66; Mattox v. United States 156 U.S. at 237, 244 (1895); Pointer v. Texas, 380 U.S. 400, 407 (1965) (dying declarations).

When the inculpatory portion of the statement is also against the declarant's interest, or when it is neutral because the declarant has not attempted to diminish his own role, there is little reason to suspect that portion of an otherwise reliable statement is untrustworthy. York, 933 F.2d at 1363.

So long as the incriminating and inculpatory portions of a statement are closely related, . . . if the circumstances surrounding the portion of a declarant's statement inculcating another are such that the court determines that the inculpatory portion of the statement is just as trustworthy as the portion of the statement directly incriminating the

declarant, there is no need to excise or sever the inculpatory portion of the statement.

York, 933 F.2d at 1364.

The Ninth Circuit has reserved the question of whether corroboration is required when the hearsay statements offered fall squarely within the two prongs of 804(b)(3). United States v. Nazemian, 948 F.2d 522, 530-31 (9th Cir. 1991), cert. denied, \_\_\_ U.S. \_\_\_, 113 S.Ct. 107, 121 L.Ed.2d 65 (1992). Here, the Ninth Circuit considered the propriety of admitting a confidential informant's recitation of a statement by a dead declarant/co-conspirator. The declarant's statement was admitted since the portion of the statement implicating the defendant was closely entwined with the declarant's solidly inculpatory admission of his involvement and other evidence and testimony at trial corroborated the declarant's statement. Id. at 531.

The Ninth Circuit has also enumerated circumstances under which statements may not be sufficiently against interest and/or lack reliability, such as (1) made under custody; (2) an attempt to curry favor from authorities; (3) government offer to reduce sentence for cooperation; and (4) statements trivialize the declarant's role. United States v. Magana-Olvera, 917 F.2d 401, 409 (9th Cir. 1990). The statement in Magana-Olvera sought to be introduced was made by a declarant in custody, motivated to seek favor from federal authorities, encouraged by the government by an offer of shortened prison time, and who gave statements trivializing his own role.

In United States v. Holland, 880 F.2d 1091, 1094 (9th Cir. 1989), the Ninth Circuit set out circumstances which supported

a finding of reliability of a tape recording made by a cooperating witness in a conversation with two men responsible for "padding" the payroll of the Port of Sacramento. The tape made by the cooperating witness was admitted against the parties to the conversation and a co-defendant inculpated in the conversation, but not present. In concluding that the tape was admissible the court noted that: (1) the conversation was between friends, without a suggestion of involuntariness; (2) although sometime after the substantive offenses, the conversation occurred contemporaneously with the conspiracy to obstruct justice; (3) the declarants' remarks amounted to a confession of crime, a factor especially important; (4) these statements were corroborated by other evidence on the record, (5) the remarks by the declarants were purportedly based on personal knowledge; (6) the remarks were largely spontaneous, although elicited in part; and (7) the declarants had no reason to lie to the cooperating witness.

Applying this analysis to the case at bar, it is clear that the statements by Anderson and Hopkins should be admitted. None of the statements were made while the declarants were in custody. There is no suggestion of an attempt to curry favor from federal or other authorities; there was no negotiation with the Government to reduce their sentence or otherwise reward the statement; and the statements have clearly incriminated the declarants. On the other hand, suggesting reliability, the statements are voluntary, between friends; although after the substantive offense, the consensual conversations were close in time, and the Title III conversations were contemporaneous with the conspiracy to obstruct justice; the statements amounted to

confession of a crime; the statements are corroborated by other evidence, most importantly the direct testimony of Mike Murphy and others; the remarks are purportedly based on personal knowledge; they, although elicited in part by Anthony, were largely spontaneous; and neither Anderson nor Callaham had any reason to lie.

The Tenth Circuit has, in fact, dealt with the precise issue being advanced by the Government. In Jennings v. Maynard, 946 F.2d 1502, 1505 (10th Cir. 1991), a statement was given to a law enforcement officer by a declarant who assisted Jennings in planning and facilitating a burglary. After finding that the declarant was unavailable (he refused to testify due to threats from the defendant), the Tenth Circuit noted that the lower courts, including the state district court, the Oklahoma Court of Criminal Appeals, and the federal district court of the Western District of Oklahoma, had:

. . . each individually held that the reliability of Ballew's statement may be inferred because the statement falls within the firmly rooted hearsay exception commonly referred to as the statement-against-interest exception.

Id. at 1505.

The Tenth Circuit made the specific finding that the statement-against-interest exception is a firmly rooted hearsay exception. Id. at 1506. The Jennings court also noted other indications of reliability, such as evidence corroborating this statement and the fact that the declarant had received threats -- most likely from the defendant.

The Government urges this Court to make a finding of admissibility of the statements by defendants Anderson and Callahan to Anthony and others, consistent with the rulings in Ohio v. Roberts, Bourjaily, and Jennings. These statements are offered under Fed. R. Evid. 804(b)(3), as statements against penal interest, and are admissible against both Anderson and Hopkins.

### III. SUMMARY CHARTS

The Government will offer certain summary charts pursuant to Rule 1006, Fed. R. Evid. The charts will be introduced primarily through the testimony of Special Agent John Hippard of the FBI. The charts are derived exclusively from competent testimony and exhibits which will have been previously admitted. An FBI agent's testimony regarding his analysis of documents is admissible under Rule 1006. United States v. Evans, 572 F.2d 455, 491-2 (5th Cir. 1978), cert. denied, 439 U.S. 870.

All information to be included in the charts was provided to the defendants pursuant to open-file discovery. It has long been the rule that the trial court, in its discretion, may allow the presentation of summary evidence to guide and assist the jury in understanding and judging the factual controversy. United States v. Cooper 464 F.2d 648, 656 (10th Cir. 1972), cert. denied, 409 U.S. 1107 (1973). It is only necessary that the summary chart be based on admissible documents that have been previously made available to the defendant so that the correctness of the summary may be tested on cross-examination. United States v. Goodwin, 470 F.2d 893, 899 (5th Cir. 1972), cert. denied, 411 U.S. 969 (1973); United States v. Foley, 598 F.2d 1323, 1337-38 (4th Cir. 1979),

cert. denied, 444 U.S. 1043 (1980). When a chart used to accompany an opening statement does no more than assist the jury in understanding the nature of the proof it is about to hear, use of the chart should be permitted. See United States v. Churchill, 483 F.2d 268, 274 (1st Cir. 1973); United States v. Rubino, 431 F.2d 284, 289-290 (6th Cir. 1970), cert. denied, 401 U.S. 910 (1971).

A foundation for the admission of each chart will be laid through the testimony of a witness or witnesses who will testify that the chart accurately reflects information contained in documents already identified. The foundation for the admission of a chart under Rule 1006 was reviewed in United States v. Behrens, 689 F.2d 154, 161-2 (10th Cir. 1982), cert. denied, 459 U.S. 1088. It is not necessary that the witness presenting the chart be an expert witness or have some specialized knowledge about which he or she is testifying when the chart does not contain complicated calculations which would require the need of an expert for accuracy. United States v. Jennings, 724 F.2d 436, 443 (5th Cir. 1984), cert. denied, 467 U.S. 1227.

The Government will move to have the summaries themselves admitted into evidence and sent to the jury during deliberation. Summary charts may be admitted into evidence when the summary is based on admissible evidence. Rule 1006, Fed. R. Evid.; United States v. Scales, 594 F.2d 558, 562-3 (6th Cir. 1979), cert. denied, 441 U.S. 946. The jury may take charts, like other evidence, with them into the jury room. United States v. Stephens, 779 F.2d 232, 240 (5th Cir. 1985); United States v. Orłowski, 808 F.2d 1283, 1289 (8th Cir. 1986), cert. denied, 482 U.S. 927; United States v. Scales, 594 F.2d at 564 n.3.



Courts have repeatedly allowed the use of charts similar to the ones the government intends to use in this case. See, e.g., United States v. Kaatz, 705 F.2d 1237 (10th Cir. 1983) (chart summarizing the defendant's income); United States v. Harenberg, 732 F.2d 1507 (10th Cir. 1984) (chart summarizing the government's tax calculation); United States v. Stephens, 779 F.2d 232 (simple flowcharts tracing the defendant's use of loan proceeds); United States v. Orłowski, 808 F.2d at 1289 (charts "tracing the disposition of the checks generating [defendant's] receipts" and "reflecting [defendant's] total unreported income"); United States v. Lemire, 720 F.2d 1327, 1346-49 (D.C. Cir. 1983), cert. denied, 467 U.S. 1226 (summary of complex cash flow through companies based on letters, invoices, bank drafts and testimony); United States v. Scales, 594 F.2d at 562 (summary of indictment). Courts allow the charts because the evidence involves numerous exhibits which are difficult to examine in court without the charts and the charts are helpful to the jury. United States v. Stephens, 779 F.2d at 239; United States v. Scales, 594 F.2d at 564.

#### IV. ADMISSIBILITY OF EVIDENCE AGAINST ONLY ONE DEFENDANT

During the course of trial, the Government expects to offer some evidence which may be admissible against only one defendant or the other. An example would be certain testimony of Robert Anthony about the early course of dealings with defendant Anderson, some of which was specifically mentioned in the Government's Rule 404(b) Notice. The Government has previously responded to motions by both defendants to sever them from one

another for the reason of prejudicial joinder under Rules 8(b) and Rule 14, Federal Rules of Criminal Procedure. The Government opposed such motion because the very language of Rule 8(b) and Rule 14 assumes certain evidence may be admitted against one defendant and not necessarily applicable to another. United States v. Haggard, 369 F.2d 968, 973 (8th Cir. 1966).

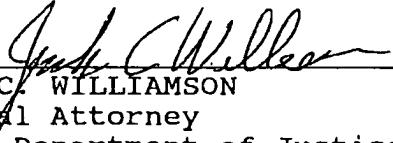
In fact, case law provides examples in which a defendant has been found properly joined with co-defendants even though the moving defendant did not participate in several of the underlying charges facing his co-defendants. United States v. Chavis, 772 F.2d 100, 111 (5th Cir. 1985).

The focus of the Rule 8(b) and Rule 14 inquiry is on the degree of overlap of the issues and evidence underlying the charges against multiple defendants. The link between defendants sufficient to support joinder under Rule 8(b) and Rule 14 can be established by common evidence as to various counts. United States v. Rogers, 921 F.2d 975, 984 (10th Cir. 1990), cert. denied, 112 L.Ed.2d 83, 111 S.Ct. 113 (1993). The commonality here is apparent; Count 1 charges the defendant Hopkins with being a recipient of a bribe, and Count 2 charges defendant Anderson with the payment of that same bribe. The Government respectfully suggests that in all those circumstances where evidence may be admissible against one defendant and not the other, that a limiting, cautionary instruction, given to the jury at the time of the admission of the evidence, is sufficient to remove the prejudice which might follow. Allegations of "prejudicial spillover" and a jury's inability to follow cautionary instructions have been consistently rejected by the Tenth Circuit as a

sufficient basis to grant a motion for severance. See United States v. Cardall, 885 F.2d 656, 667 (10th Cir. 1989); United States v. Hack, 782 F.2d 862, 870 (10th Cir.), cert. denied, 476 U.S. 1184 (1986).

It is respectfully submitted that the substantial majority of the evidence to be offered is admissible against both defendants, but in those circumstances where it may be admissible against only one, a limited, cautionary instruction would remove any prejudice from the defendant against whom the evidence is not admissible.

Respectfully submitted,

  
\_\_\_\_\_  
JACK C. WILLIAMSON  
Special Attorney  
U. S. Department of Justice  
1100 Commerce Street, 3rd Floor  
Dallas, Texas 75242  
214/767-0951

\_\_\_\_\_  
TANYA NORTHRUP  
Special Attorney  
U.S. Department of Justice  
1205 Texas Avenue, C201  
U.S. Federal Building  
Lubbock, Texas 79401-4002  
806/743-7351

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing pleading was served on each of the parties herein by mailing the same to them or to their attorneys of record as follows: D.C. Thomas, Suite 504, Bank of Oklahoma Plaza, 201 Robert S. Kerr, Oklahoma City, Oklahoma 73102; and Stephen Jones, Jones & Wyatt, 114 East Broadway, Suite 1100, P.O. Box 472, Enid, Oklahoma 73702-0472, counsel for defendant Anderson; and Kenneth R. Nance, 5224 South Western Avenue, Oklahoma City, Oklahoma 73109, counsel for defendant Hopkins; on November 1, 1994.

  
\_\_\_\_\_  
JACK C. WILLIAMSON

HLS:nlw

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

MDJ  
Howard W.

IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MOTLEY, JR., FOR AN INQUIRY ) CAUSE NO. FUD 000260  
INTO THE EFFECT OF THE 1986 TAX REFORM )  
ACT ON OKLAHOMA UTILITIES. ) ORDER NO. 341630

HEARINGS: November 10, 1986 (Technical Conference)  
January 23, 1989 (Prehearing Conference)  
January 26, 27, 30, and February 3, 1989  
(Hearings on the merits before Shelton L.  
Benedict, Hearing Officer)  
July 20, 1989 (Appeals to the Hearing Officer's Report)  
before the Commission en banc.

APPEARANCES: Maribeth D. Snapp, Deputy General Counsel, and Jane P.  
Olson, Senior Assistant General Counsel, on behalf of the  
Commission Staff  
Glen A. Glass, George Makohin, G. Michael Bauer, and  
William Anderson, Attorneys on behalf of Southwestern Bell  
Telephone Company  
Ronald E. Stakem and C. K. Casteel, Jr. Attorneys on  
behalf of MCI Telecommunications Corporation  
Eric R. King and Connie Mingle, Attorneys on behalf of the  
American Association of Retired Persons  
Ann Down, Attorney on behalf of INCOG  
Dan Brummitt and Elizabeth Kerr, Attorneys on behalf of  
the City of Oklahoma City  
Robert A. Butkin, Assistant Attorney General, on behalf of  
the Oklahoma Attorney General's Office  
Robert D. Allen and W. Richard Morris, Attorneys on behalf  
of AT&T Communications of the Southwest, Inc.  
Ron Comingdeer, Attorney on behalf of the Oklahoma Rural  
Telephone Coalition  
Jack C. Lorenz, Attorney on behalf of Southwestern Bell  
Yellow Pages

ORDER REGARDING RATES OF SOUTHWESTERN BELL TELEPHONE COMPANY

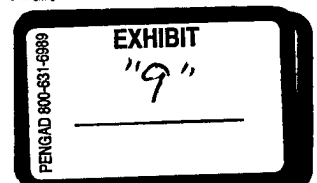
BY THE COMMISSION:

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, this Cause comes on for consideration and action upon the Application of Howard W. Motley, Jr., Director, Public Utility Division, for an inquiry into the effect of the Tax Reform Act of 1986 on Oklahoma utilities, and in this instance, specifically, Southwestern Bell Telephone Company ("SWBT").

INTRODUCTION AND PROCEDURAL HISTORY

On October 23, 1986, Howard W. Motley, Jr., Director of the Public Utility Division, filed an application for an inquiry into the effects of the newly-enacted Tax Reform Act of 1986 ("TRA") on Oklahoma utilities. The TRA revised the corporate federal income tax rate from 46 percent to 34 percent, effective July 1, 1987. However, for calendar year 1987, a "blended" rate of 40 percent was prescribed, with a 34 percent rate to be used in 1988 and thereafter.

Twelve companies were named as respondents, including SWBT. A Technical Conference between the respondents and Commission Staff was conducted on November 10, 1986. The purpose of the Technical Conference was to establish the scope of the information required to determine the effect of the TRA, as well as to establish the time for providing such information for quantification by the Staff.



On June 12, 1987, Notices Setting Hearing on the Rates of several respondents were issued. Hearing was set for and held on June 23, 1987 before the Commission *en banc*. On that date, the Commission was advised that Staff and SWBT had entered into a Stipulation, a copy of which was submitted and accepted. In the Stipulation, the parties agreed that if the Commission determined, after hearing, that a rate reduction would be appropriate for SWBT, taking into account all known and measurable changes in SWBT's business, that such reduction would be effective as of July 1, 1987, the effective date of the TRA.

The Stipulation was adopted on June 23, 1987 by this Commission in Order No. 313853. An Order *Nunc Pro Tunc*, Order No. 314277, was issued July 6, 1987, correcting certain scrivener's date and other errors.

At various times, during the course of this proceeding, various parties sought and were granted intervention. These include the Attorney General, American Association of Retired Persons ("AARP"), MCI Telecommunications Corporation ("MCI"), AT&T Communications of the Southwest, Inc. ("AT&T"), the Oklahoma Rural Telephone Coalition ("ORTC"), Haileyville Schools, the City of Oklahoma City, City of Ardmore, Indian Nations Central Oklahoma Governments ("INCOG"), Department of Defense, and 911 Association of Central Oklahoma Governments ("AOCG").

On October 28, 1987, the Commission issued its order remanding this Cause, insofar as SWBT was concerned, to a Hearing Officer for taking of evidence, hearing and reporting thereon to the Commission. Hearing was originally set for December 7, 1987 and continued by the Hearing Officer to February 22, 1988 at the request of the Staff, due to a loss of Staff personnel. Thereafter, the hearing was continued without objection to June 16 and 17, 1988, then to July 13 and 14, 1988. Upon the request of the Attorney General, the hearing was continued, without objection, to August 25 and 26, 1988 by order of the Commission dated July 18, 1988. On August 12, 1988 the AARP filed its Motion for Continuance, requesting postponement of the hearing until September 29 and 30, 1988. The hearing was continued by the Hearing Officer until October 20 and 21, 1988.

Additional continuances of the hearing were granted by the Hearing Officer to November 17 and 18, 1988, and to January 26 and 27, 1989. A prehearing conference was held on January 23, 1989. Hearings were held on January 26, 27, 30 and February 3, 1989 before Hearing Officer Shelton L. Benedict. Testimony and exhibits were submitted. Late-filed Exhibit SWB-119 was filed by Staff on March 15, 1989.

The parties filed proposed summaries of evidence, findings of fact and conclusions of law on April 14, 1989. The Hearing Officer filed his Report, including findings and recommendations, on June 2, 1989. The Staff, SWBT, the Attorney General and AARP filed appeals to the Report of the Hearing Officer, as well as responses to each others' appeals. Oral arguments on the appeals were held before the Commission *en banc* on July 20, 1989.

On August 9, 1989, after preliminary deliberations, the Commission ordered the parties to submit legal briefs concerning the appropriate rate of interest on any revenue excess, the method of calculating interest, and whether the interest rate should be different for the time frame preceding this Commission's order than for the time frame following this Commission's order. Briefs were submitted by Staff, the Attorney General, AARP, SWBT and GIE Southwest Incorporated on August 23, 1989, as ordered. This Cause comes on now for the order of the Commission.

#### I. JURISDICTION

Respondent SWBT is a Missouri corporation domesticated and authorized to do business in Oklahoma as a public service corporation.

It has plant, equipment and investment located in Oklahoma and dedicated to service of its Oklahoma customers throughout its certified territory. Applicant Motley filed the Application in this Cause, as to SWBT, pursuant to Article IX, Section 18 of the Oklahoma Constitution and 17 O.S. § 137 et seq. The Commission therefore finds that it has jurisdiction in this Cause, and that due and proper notice was given as required by law and by the orders of this Commission for all proceedings in connection with this application as relates to SWBT.

## II. SUMMARY OF EVIDENCE

The Report of the Hearing Officer, filed June 2, 1989, summarizes the testimony of the various witnesses on behalf of the parties, as well as rebuttal testimony and a summary of late-filed Exhibit 119, which included additional testimony by Staff witnesses Shirley Norman and Mary Steel. The Commission hereby adopts the summary of the evidence contained in the Report of the Hearing Officer, except for the items noted immediately below.

With respect to the summary of the testimony of Staff witness Mary Steel, the summary is hereby corrected as stated in the Staff's Appeal to the Report, filed June 15, 1989. With respect to the freezing of separations factors at the October, 1986 level for the reserve deficiency account, Ms. Steel utilized an aggregate of all the separations factors, rather than just the Basic Allocation Factor (BAF), in recommending that the reserve deficiency amount be frozen at the October, 1986 level. Also, the summary of Ms. Steel's testimony, at page 3 of the Report, is hereby corrected to reflect that the toll pool adjustments originally made by Staff did not include out-of-period toll pool adjustments. However, the Commission notes that Staff's late-filed Exhibit 119 did take into account out-of-period adjustments to the intralATA toll and carrier access categories.

The summary of Ms. Norman's testimony, contained at page 4 of the Hearing Officer's Report, is hereby corrected essentially as stated by the Staff at page 2 of Staff's Appeal. With respect to bad debts related to the Oklahoma Yellow Page directories, neither Staff nor SWBT used a sales day method of allocation. Staff used a two-year average percentage of actual Oklahoma net write-offs by the Yellow Page subsidiary.

With respect to excess deferred income taxes, the summary of Ms. Norman's testimony at page 5 of the Hearing Officer's Report is hereby corrected as stated by Staff at page 2 of its Appeal.

With respect to the benefit that ratepayers receive from the reduction of SWBT's rate base by the amount of excess deferred income taxes, the summary of Ms. Norman's testimony at page 6 of the Hearing Officer's Report is hereby corrected as stated at page 2 of Staff's Appeal. The summary should reflect that ratepayers benefit from the amortization of excess deferred income taxes because SWBT's rate base is reduced by the amount of excess deferred income taxes, thereby lowering SWBT's overall revenue requirement.

With respect to the flow-back of excess deferred income taxes, the summary at page 6 of the Hearing Officer's Report is hereby corrected to reflect that unprotected excess deferred income taxes are proposed to be flowed back to the ratepayers over two years, and protected excess deferred income taxes are to be flowed back pursuant to the Average Rate Assumption Method (ARAM).

The summary of testimony of Staff witness Larry Schroeder, contained at page 9, paragraphs 3 and 7, is hereby corrected as stated in Staff's Appeal at pages 2 and 3, and as stated by SWBT in its Appeal at page 20. Specifically, with respect to mileage charges, Mr. Schroeder proposed an immediate one-time reduction of mileage charges by 50 percent upon issuance of the Commission's order in this Cause. Mr. Schroeder also

recommended that as upgrading from multi-party service to single party service is completed, new rates and mileage charges would apply as set forth in Exhibit No. SWB 53, instead of waiting until all exchanges are upgraded before switching to new rates.

The summary of SWBT witness T. D. White, contained at page 16, paragraph 5 of the Hearing Officer's Report is hereby corrected as stated by Staff in its Appeal at page 3. Staff's cash working capital allowance was negative \$1.4 million for all three test periods.

Therefore, with the exception of the summary of witnesses Steel, Norman and Schroeder, the summary of evidence contained in the Hearing Officer's Report, including the Summary of late-filed Exhibit No. 119, is hereby adopted by the Commission, with the corrections as noted, as the summary of evidence of the Commission. Said Hearing Officer's Report is therefore attached hereto as Attachment "A" and incorporated herein by reference. With regard to the summary of evidence for witnesses Steel, Norman and Schroeder, the Commission finds that the summary of evidence which was attached to the appeal filed by the Commission Staff should be adopted as the Commissioner's summary of evidence for those witnesses. Said summaries are therefore attached hereto as Attachment "B" and incorporated herein by reference.

### III. FINDINGS AND DISCUSSION

As a preliminary note, the Commission notes that the Application in this Cause was filed on October 23, 1986. Numerous continuances were granted for various reasons. The number of audits required to be conducted of the twelve respondents (not only SWBT) strained the resources of the Staff. Continuances were granted to allow intervenors adequate time to investigate and fully prepare their positions. These proceedings have been subject to personnel changes on the part of the Staff, including the resignation of the auditors conducting the audit of SWBT, and the unfortunate passing away of a Staff attorney. Throughout this proceeding, Staff has conducted itself admirably in performing its public duties.

The Commission notes with great concern the complaints voiced by the Staff over the trouble and difficulty it had in obtaining records and information from the Yellow Pages subsidiary. Yellow Page revenues are imputed to SWBT in computing revenue requirements for SWBT. Therefore, an accurate accounting of Yellow Pages revenues and expenses is necessary if this Commission is to make informed decisions. Lack of cooperation in furnishing the necessary and required data regarding the Yellow Pages cannot and will not be tolerated by this Commission. It is regrettable that the Staff was forced to resort to public testimony before this Commission about the difficulty in obtaining reliable Yellow Pages data on a timely basis. This Commission trusts that the Staff will not encounter any such difficulty again in any other dockets where such information is necessary and reminds SWBT of the possibility of fines being assessed against SWBT if the Commission finds it necessary to order SWBT to provide information to Staff and said information is not produced in a timely manner.

The Commission has very carefully considered the testimony and exhibits in this Cause, the arguments of the parties, and the specific issues identified by the parties. The Commission finds that the test periods used by the Staff were appropriate. The Commission also finds that the Staff appropriately considered known and measurable changes in SWBT's business operations in Oklahoma. This Cause was established to determine the effects of the lowering of the corporate income tax rate on the respondents, including SWBT. Corporate income tax rates are calculated after revenues and expenses are taken into account. Since revenues and expenses do not remain static, Staff appropriately considered known and measurable changes pursuant to the stipulation entered into between Staff and SWBT and adopted by this Commission. Finally, the Commission generally agrees with the recommendation



contained in the Report of the Hearing Officer that the Staff's recommendations be adopted, with specific exceptions noted below.

#### A. Treatment of Excess Deferred Income Taxes

The AARP urged that interest be applied on excess deferred income taxes not yet amortized. Both Staff and SWBT urged that this would not be appropriate, since the amount is deducted from the rate base, the revenue requirement is lowered, and ratepayers are benefited. As noted in the Hearing Officer's Report, a different treatment by Staff would have resulted in a substantial revenue deficiency, requiring telephone rates to be raised. The Commission adopts the recommendation of the Hearing Officer and Staff and finds that no additional interest should be charged on excess deferred income taxes. The Commission finds that the Staff appropriately recognized \$5.9 million of deferred taxes previously flowed through to the ratepayers in establishing the amount of excess deferred taxes. The Commission also finds that the Staff's treatment of the amortization of protected excess deferred taxes of \$54.9 million under the Average Rate Assumption Method (ARAM) is proper, as noted in the Report of the Hearing Officer at page 25. Staff's treatment of the unprotected portion of excess deferred taxes (\$6.2 million) by amortization over two years is also proper.

#### B. Treatment of Depreciation Reserve Deficiency

Staff's calculations include an accounting for amortization of a depreciation reserve imbalance or deficiency. A depreciation reserve deficiency arises when depreciation rates previously established for plant and equipment become inadequate due to technological or physical obsolescence of the plant and equipment. The amount of the depreciation reserve deficiency was established for SWBT at the 1986 Three-Way Meeting wherein SWBT, Commission Staff and the FCC staff met together for the purpose of discussing depreciation rates for SWBT. Staff, through Staff Witness Steve Wilt, fully participated in this three-way process with the FCC and SWBT, which occurs periodically over a three-year cycle. At that meeting, Staff reviewed the depreciation rates for each account and the reserve imbalance which the FCC had verified to exist through the use of computer programs which analyzed data supplied by SWB. Staff's calculations took into account a total state reserve deficiency of \$180 million. Staff's proposed amortization period for the intrastate portion of the deficiency was four years, beginning July 1, 1987.

The Attorney General argued that there was no evidence to support a finding that this reserve deficiency existed, nor to support a four-year amortization period. The Commission finds that more than sufficient evidence existed to support the existence of the reserve deficiency. Although the Commission lacks the staff and necessary computer models to conduct an independent review of SWBT's reserve imbalance, the staff had the opportunity to review the audit conducted by the FCC and was satisfied concerning its accuracy. Mr. Wilt testified that the four-year amortization period was agreed upon by the Commission and the FCC at the Three-Way Meeting. FCC Order No. 86-603 summarizes the negotiations that took place regarding SWBT at the Three-Way Meeting. Mr. Wilt also testified that Staff matched the impact of the amortization of the reserve deficiency with the impact of the TRA. This was done to avoid creating a revenue deficiency for SWBT, which could have caused a rate increase to Oklahoma ratepayers. The four-year period recommended by Staff avoids an undue hardship on subscribers (reflected in Mr. Wilt's Exhibit SW-6). Mr. Motley likewise testified that use of a four-year amortization period eliminates the possibility of future local rate increases because of the depreciation reserve deficiency. The Commission finds that, as a matter of policy, this matching treatment provides rate stability to the general body of ratepayers.

There is an additional policy reason for adopting the four-year amortization period. The depreciation reserve deficiency, or reserve

imbalance, arises due to rates based on depreciation levels which were too low in the past to recover the appropriate depreciation. As Staff argued in its appeal from the Report of the Hearing Officer, a four-year amortization period allows an appropriate "catch-up" of depreciation from the general body of ratepayers which has received the benefits of under-depreciation in the past. The Commission therefore finds that Staff's recommendation is in the best interests of the general body of ratepayers, and that there is more than sufficient evidence that Staff's recommendation is appropriate. The Commission adopts Staff's four-year amortization period, as stated above.

#### C. Separations Factors

Separations factors are used to allocate the cost of those facilities which are used to provide both interstate and intrastate service between interstate and intrastate jurisdictions. In calculating SWBT's rate base, Staff applied separations factors prescribed by Part 36, promulgated by the FCC, to the amortization reserve deficiency, but "froze" the factors at October, 1986 levels. SWBT testified that separations factors under Part 36 are not static; recent changes in separations procedures are designed to shift more cost and expense to the intrastate jurisdiction. Staff froze the separations factors as applied to the amortization of the reserve deficiency in order to avoid charging Oklahoma ratepayers more than their fair share of this expense. Staff recommended that SWBT apply for a waiver from the FCC seeking increased recovery from the interstate jurisdiction if it is prevented from recovering its full costs due to this proposed adjustment. The Commission adopts the recommendation of the Staff and the Hearing Officer regarding the application of the October, 1986 levels of separations factors, and finds that because this deficiency was accumulated over past years, Staff's treatment is appropriate because it eliminates Oklahoma ratepayer's exposure to increased dollar amounts due to future unrelated shifts in cost to the intrastate jurisdiction.

#### D. Private Letter Ruling

In connection with the depreciation reserve deficiency, Staff witness Shirley Norman expressed a concern regarding the amortization of the investment tax credit ("ITC"). The four-year amortization of the reserve deficiency, as allowed by this Commission based on Staff's recommendation, allows a company to "catch up" on its depreciation, since depreciation rates set in the past may have become too low due to technological and physical obsolescence. Related to depreciation, which is allowed for both regulatory and tax purposes, is ITC. Section 46 of the Internal Revenue Code governs the ITC which may be allowed to a public utility. To provide an equitable result to the ratepayers, Ms. Norman suggested that the ITC amortization related to the assets for which the reserve deficiency was set should be increased by "matching" the amortization of that ITC with the amortization of the depreciation reserve deficiency. Since increased ITC would lower SWBT taxes for regulatory purposes, the tax savings could be passed on to ratepayers.

Because there is a risk that the proposed treatment could violate the normalization rules established by the Internal Revenue Code and the Internal Revenue Service, Miss Norman did not propose an adjustment increasing the amortization of the ITC but recommended that the Commission order SWBT to seek a private letter ruling from the IRS to ensure that Staff's proposed treatment does not violate the normalization rules. A violation would result in certain penalties to SWBT under the Internal Revenue Code, which ultimately could result in increased costs to ratepayers.

The Hearing Officer recommended that SWBT be ordered to obtain such a private letter ruling. The Commission adopts the recommendation of the Hearing Officer and orders SWBT to seek the private letter ruling as soon as possible following this order. This will allow the Commission to re-evaluate, whether it is appropriate to "match" the amortization of the ITC with the amortization of the depreciation reserve deficiency in Cause No. PUD 000662.

#### E. Return on Equity

The Commission finds that the 13.5% return on equity for 1988 and prospective years and the 13.875% blended rate for 1987 used by the Staff for the limited purpose of this Cause is appropriate. 13.5% has been applied uniformly to all respondents in this Cause. Furthermore, at oral arguments before this Commission, SWBT, through its counsel, stated that it accepted this return on equity for purposes of this proceeding. The Commission finds that there is no disagreement on this issue in this proceeding.

#### F. Severance Pay and Labor Tracking

In calculating the revenue requirement, SWBT proposed to include \$4.7 million of a total of \$9 million of severance pay expenses. SWBT argued that its calculation was consistent with this Commission's last rate order for SWBT, which allowed the average annual amount of severance pay since divestiture. Staff excluded all severance pay expense in lieu of making an adjustment for decreased personnel through severance pay, because, Staff was unable to verify annualized wage levels due to the methodology that SWBT uses to track its Oklahoma labor costs. The Commission finds that Staff's disallowance of severance pay was correct.

The Staff had requested implementation of a labor tracking mechanism which would permit verification upon audit of Oklahoma-specific labor costs. The Hearing Officer recommended that SWBT's labor tracking methods be investigated by the Staff. The Commission adopts the recommendation of the Hearing Officer and finds that the Staff should investigate and determine the adequacy of SWBT's labor tracking mechanism in Cause No. FUD 000662.

#### G. Short-Term CWIP

Staff's calculations of rate base disallowed revenue-producing Construction Work in Progress (CWIP). Conversely, the Staff also did not include the revenues associated with CWIP. SWBT argued that all short-term CWIP should be included in the rate base if the construction is placed in service within six months after the end of the test year, which would be consistent with prior treatment. The Commission finds that Staff's treatment of CWIP for SWBT is equitable because revenues were not updated and it is consistent with the treatment of CWIP for all other respondents in this Cause. The Commission therefore finds that the Staff's treatment of CWIP in this case is appropriate, and adopts the recommendation of the Hearing Officer.

#### H. Cash Working Capital

SWBT performed a lead/lag study for the purpose of determining cash working capital. Because the data became outdated, and Staff was unable to audit the lead/lag study due to time constraints, Staff used a modified formula approach. The Commission finds that the modified formula approach has been used in the past and is an acceptable method for determining cash working capital.

SWBT did not argue against the modified formula approach itself, but argued that an assumption used by the Staff was incorrect. SWBT argued that the Staff erroneously excluded all of local service revenues billed in advance, based on the assumption that local service, which is billed one month in advance, was paid by all customers on the date of the bill. Staff did exclude one month's local service revenues, because the 45-day formula method which it used is based on the premise that bills are rendered after the utility service is provided. SWBT admitted that the Commission has used the modified formula method in the past. The Commission finds that the Staff calculation of cash working capital using the modified formula method was appropriate and adopts the recommendation of the Hearing Officer on this issue.

### I. Yellow Pages

In imputing net income from the Yellow Pages subsidiary to SWBT for purposes of calculating SWBT's revenue requirement, the Staff used 1984 expenses, which were available from SWBT's last rate case, because Staff was unable to verify the 1987 test year figures provided to it. Conflicting sales days information was provided to Staff and although SWBT maintained that an answer regarding this conflicting information was provided, the Staff was not provided with source documents by which the Staff could audit and verify the answer.

SWBT argued that because Yellow Pages expenses increased over 1984 levels, the disallowance of 1987 expense levels by Staff resulted in an imputation of more net income than was warranted. The Commission again notes its extreme displeasure regarding the way in which Yellow Pages information was handled -- or rather mishandled. In view of the difficulty the Staff had in obtaining data, and in view of Staff's inability to audit source documents, the Commission finds that Staff's treatment of Yellow Pages expenses was not only appropriate but mandated, and adopts the recommendation of the Hearing Officer. The Commission also adopts the recommendation of the Hearing Officer that, in all future cases, SWBT shall be required to make all Yellow Pages books and records available to Staff for a complete evaluation of Yellow Pages operation and the imputation of Yellow Pages net income from those operations to Oklahoma ratepayers.

The Commission further directs Staff to file a formal request with the Commission for an order directing production of any information which is not timely produced in future cases. If the Commission finds that SWBT is in violation of a Commission Order directing production of documents, the Commission may then exercise its statutory authority to fine SWBT up to \$500 per day for such violations.

### J. Recognition of FCC Mandated Changes for Parts 32, 36 and Related GAAP Changes

The basic test year in this case is a test year ended September 30, 1987. SWBT keeps its books and records in accordance with the Uniform System of Accounts ("USOA"), promulgated by the FCC. Effective January 1, 1988, the FCC implemented the Uniform System of Accounts (USOA) rewrite, Part 32 and Part 36 - Separations Procedure pursuant to the rewrite. Part 32 required changes in accounting whereby some costs previously capitalized will now be expensed and also required associated changes in accounting from the former USOA to Generally Accepted Accounting Principles (GAAP). Although, SWBT began keeping its books and records in accordance with the USOA rewrite, the changes mandated by the rewrite occurred outside of the test year in this case. Staff argued against the "GAAP" adjustments as inappropriate for ratemaking purposes as explained on page 4 of Staff's appeal filed June 15, 1989. Moreover, at the time the Staff was able to perform its audit, a full year of data under Part 32 and Part 36 was not available for audit purposes. Therefore, for the 1988 and prospective periods under consideration here, the Staff determined that it would not be appropriate to calculate revenue requirements based on an incomplete picture of how the other changes would affect SWBT. Rather, Staff determined that such changes could be considered in future proceedings (such as the current Cause No. PUD 000662), when a full year of actual data would be available.

The Commission finds that the Staff's disallowance of the GAAP changes was appropriate, and that the impact of the remaining changes should be considered in Cause No. PUD 000662.

### K. Revenue Requirement

The Staff presented its calculations of SWBT's revenue requirements in financial statements included in Staff's exhibits. These calculations took into account the revised corporate income tax rate and

other known and measurable changes. SWBT presented its own calculations, using a 13.5 percent return on equity for illustrative purposes. Each specific point of disagreement between Staff's calculations and SWBT's calculations have been discussed above. For the reasons stated above, as to each issue, the Commission finds that Staff's calculations are appropriate.

Staff's calculations were corrected in late-filed Exhibit No. 119. That exhibit took into account the flow-through of pre-1977 deferred income taxes, for the reasons explained in the Report of the Hearing Officer (page 28, Paragraph E), and included an adjustment for interest capitalized during construction, as explained at page 2 of Shirley Norman's testimony in Exhibit 119. It also took into account adjusted depreciation expense for the 1987 test year and pooling adjustments, as explained in the Report (page 28, Paragraph F). The Commission adopts Staff's calculations as corrected and set forth in Exhibit 119.

Although the test year used ended September 30, 1987, the Staff annualized its figures, and calculated revenue requirements and converted them to a calendar year. Staff took into account the calendar year from January 1, 1987, calendar year 1988, and a prospective period through December 31, 1989. Any finding regarding revenue requirement would necessarily be from January 1, 1987 up to the date of this order. Since a revenue excess was found, a rate reduction is necessary after the date of this order, based on the calculated revenue requirement for the prospective period.

The Commission finds, based on Staff's calculations, that SWBT had a revenue excess for each of the three periods delineated above, as follows:

1987 -	\$9,548,112	(Exhibit 119, Part II A, Section B, Schedule R/D-1)
1988 -	\$12,045,989	(Exhibit 119, Part III A, Section B, Schedule R/D-1)
<u>Prospective -</u>	<u>\$7,847,172</u>	(Exhibit 119, Part IV A, Section B, Schedule R/D-1)

The prospective figure assumes a full year, i.e. the issuance of this Commission's order on December 31, 1989 and the collection of previously tariffed rates by SWBT until that time. That amount shall be prorated to September 30, 1989.

SWBT is ordered to implement new reduced rates (as set forth below under Rate Design). The new reduced rates are based on the financial statements for the prospective period shown in Part IV A, Section B, Schedule R/D-1 of Exhibit 119.

#### L. Interest

Legal briefs on interest were submitted as noted in the Introduction and Procedural History. The Commission, having fully considered the arguments of the parties, finds that imposition of interest on the revenue excess is fair to the ratepayers of Oklahoma and appropriate in view of the Stipulation that was agreed to by SWBT. The Staff pointed out in its brief that this Commission has previously imposed an interest rate in Order No. 293717, issued in Cause No. PUD No. 000254, as well as in Order No. 334156, issued in Cause No. 29688. In both cases, the rationale was that the amounts were large enough that they could be invested in Treasury bills. The Attorney General has stated that the Commission's authority is broad enough to allow interest to be imposed at any rate which it deems appropriate.

The Commission finds interest should be imposed on SWBT's revenue excess, and that an appropriate annual rate of interest is the one-year Treasury Bill rates since July 1, 1987 to September 30, 1989. We further find that interest should be compounded annually. The result of this methodology is an effective rate of 8.21%. After September 30,

1989, interest shall continue to be accrued at the Company's authorized rate of return of 11.589% including the income tax factor of 1.59091 as recommended by Staff in Exhibit SWB-79, Schedule HMM-2. This interest shall be computed on that portion of the revenue excess which remains outstanding, after credit has been given for the capital improvements outlined below. This is effectively a variable rate base reduction and is necessary to recognize the value of the consumer's funds until they are invested in plant. All calculated interest amounts shall be computed quarterly and shall be applied towards the capital improvements outlined below. The amount of the revenue excess plus pre and post Order interest should be accounted for in a manner that provides that the full amount is allocated to the Oklahoma jurisdiction prospectively.

#### IV. RATE DESIGN

One of the most important goals espoused consistently over the years by this Commission has been the goal of universal service. Inherent in this goal is not only bringing affordable telephone service to the greatest number of people, but also providing the highest quality service available. This Commission has had a long-standing service improvement program, but due to financial constraints, it has not been possible to implement such a program in a relatively short time frame.

The Staff has proposed and the Hearing Officer has recommended that any revenue excess be used to upgrade SWBT's multi-party service exchanges to single-party service exchanges and provide Central Office upgrades. With this the Commission agrees. Upgrading multi-party service to single-party service will directly benefit approximately 54,000 Oklahoma customers who now have multi-party service. Central Office upgrades will improve the quality of service available to customers and increase the level of technology available to customers in the upgraded central offices. The Commission notes that the public comments submitted to this Commission overwhelmingly favored the proposed upgrade programs.

All ratepayers will benefit indirectly from these programs. As the Staff explained in its testimony, and as explained in the Report of the Hearing Officer, the capital improvement plan proposed by the Staff avoids the borrowing costs and other costs that would normally be associated with such an upgrade. Such borrowing costs would normally be permissible and recoverable by SWBT as costs of service. By avoiding such costs, rates are kept lower for all Oklahoma ratepayers.

Oklahoma has the opportunity to be on the leading edge in the elimination of multi-party service and in making quality service available, through this improvement of network facilities, to the greatest number of Oklahomans. The Staff has explained the impossibility of identifying specific ratepayers and the specific amounts to be due to ratepayers should a refund be ordered. The Hearing Officer explained this and other difficulties with respect to refund amounts in his Report (page 26). Mr. Motley, Director of the Public Utility Division, Mr. Schroeder and Mr. Burnett provided extensive testimony regarding the desirability of an elimination of multi-party service as well as reduction of certain rates. The Commission finds that the goal of universal service can best be served by implementing the rate design proposed by the Staff.

There was extensive testimony by Mr. Motley, Mr. Burnett and Mr. Schroeder not only as to the desirability of service upgrades and rate reductions, but also as to the cost of the improvement program and the specific projects to be accomplished for this program. These are set forth in considerable detail in the exhibits to the testimony of Mr. Schroeder and Mr. Burnett. Therefore, the Commission finds that no additional hearings are necessary to implement the service improvement program. Rather, the Staff is intimately familiar with the service requirements throughout the state due, in part, to Staff's continuous monitoring of the quality of service throughout the state. SWBT is required to implement the service improvement program in accordance with

the requirements set forth below. From January 1, 1987 until September 30, 1989, the Commission has found a revenue excess of \$27,479,480, together with interest from July 1, 1987, in the amount of \$3,197,687. The Commission finds that the total amount, \$30,677,167, should be used as follows:

I. Party Line Elimination Program

Capital Cost	\$13.3 million
<u>Conversion Expense</u>	<u>4.9 million</u>
Total Cost	\$18.2 million

II. The remaining balance plus interest accruing from the date of this order shall be invested in central office service upgrades

The Party Line Elimination Program shall begin immediately. Staff shall monitor the progress and the costs of the Program, and SWBT shall submit quarterly reports to Staff as to the progress and costs expended until completion of the Program. SWBT shall also perform any necessary conversion of modifiable customer telephone sets. Customers shall not be charged for the costs of modifications. Such costs shall be included in the cost of the upgrade programs. The Commission directs the Company to file appropriate tariffs to accomplish this party line elimination program.

Central office upgrades shall also be performed, as prioritized and directed by Staff in Exhibit SWB-85 (WMB-5). The costs of the Party Line Elimination Program and the costs of upgrading central offices shall equal the total revenue excess amount together with interest on any outstanding uncredited balance of the revenue excess. As the specified improvements are made, the costs of such improvements shall be credited against the total amount of the revenue excess. The central office upgrades shall be accomplished concurrently with the multi-party upgrade project and both upgrades should be completed within three (3) years.

III. Rate Reductions

The Commission finds that due to a lower revenue requirement, rate reductions are appropriate in certain categories of service as recommended by Staff witnesses Schroeder and Motley. The Commission finds that the rate design effecting a reduction in mileage charges and intralATA MIS and WATS recommended by Staff is appropriate, especially because residential local exchange service is currently subsidized and priced substantially below cost and toll rates are priced substantially above costs.

Therefore, the Commission finds that SWBT shall implement new tariffs immediately in accordance with the following schedule:

	<u>Total Annual Revenue Reduction</u>
Mileage Charges	\$6,380,000
IntralATA MIS and WATS	\$1,467,172

Mileage charges, currently paid by approximately 100,000 Oklahoma customers, shall be immediately reduced by 50 percent of SWBT's current tariffed rates. In addition, upon the conversion of a given central office (or exchange) to eliminate party-line service, flat rate mileage charges are to be applied as follows:

	<u>Monthly Rate</u>
Within 1 mile of base rate area boundary	\$.77
Outside of 1 mile from base rate area boundary	\$3.85

All customers affected by the upgrade from the multi-party to single-party service shall be notified by SWBT of any changes in their monthly local exchange rate including immediate conversion to the appropriate one-party rate and mileage charges, as a result of the upgrade.

#### V. Supreme Court Order

At the July 20, 1989 hearing before the Commission en banc, the attorneys making oral argument were questioned concerning the effect of the Supreme Court Order issued in Case No. 66,038 (Commission Cause No. 28291; SWBT's 1986 rate order) on this Commission's ability to change the rates of SWBT and order a refund, based upon the evidence presented in this Cause. The Supreme Court Order states at p. 38:

"If the Commission's post-remand findings prove to be inconsistent with the rate structure declared in its original order now on review in this case, then the Commission shall modify its rate structure to conform to the post-remand findings. The post-remand inquiry ordered here shall be deemed a continuation of the pre-appeal proceedings below. The present rate structure shall remain in force until the Commission has completed its post-remand inquiry and rendered its final decision."

Each Attorney questioned (Maribeth D. Snapp, Glen A. Glass and Robert A. Butkin) expressed their opinion that the Supreme Court Order did not preclude the Commission from ordering a reduction in the rates of SWBT and making disposition of the revenue excess which exists as a result of the stipulation and investigation into the effects of the TRA in this Cause.

The argument was made that the Supreme Court's Order was based upon a 12-31-84 test year and the Supreme Court Order did not require that rates be changed pending the Commission's investigation into the 3 specific issues which were remanded for review. The Commission was further advised that the rates to be established in this cause reflect a 9-30-87 test year and a review of SWBT's books and records based upon that test year; making the rates which are appropriate at this time completely independent of the rates established in Cause 28291. If the Commission determines that rates should be adjusted as a result of its investigation into the remand issues, rates will have to be adjusted prospectively based upon the 12-31-84 test year and this will not be precluded by the action taken in this proceeding. Additionally, if the Supreme Court's order has the effect of precluding any change to the rates of SWBT pending the investigation of the remand issues, it would arguably prevent the Commission from carrying out its constitutional obligation to oversee the rates and charges of SWBT.

Based upon the opinions of the counsel specifically questioned at the July 20, 1989 hearing and in recognition of this Commission's obligation to oversee the rates of SWBT and ensure that the customers in Oklahoma are given good service at the most reasonable price, the Commission finds that the Supreme Court Order does not prohibit the Commission from issuing an Order changing the rates of SWBT in this cause. The Commission further notes that Staff has advised the Commission, in conjunction with Cause No. PUD 000662, that a full investigation into the transfer of the Yellow Pages will require an audit of the Yellow Pages. The Staff anticipates that a complete audit of the Yellow Pages and Corporate Headquarters could take over 6 months to complete and the Staff does not anticipate an ability to be ready for hearing on the Yellow Pages remand issues until mid to late 1990. Delay of this Cause any further does not appear to be required by the Supreme Court Order nor prudent in light of the time frame anticipated for review of the remand issues.



ORDER

IT IS THEREFORE THE ORDER OF THE CORPORATION COMMISSION that the findings of the Hearing Officer, as amended by the above findings of the Commission relating to the Application of Howard W. Motley, Jr. should be and the same are hereby adopted as the Order of this Commission.

IT IS FURTHER ORDERED that Southwestern Bell Telephone Company shall immediately carry out the order of this Commission, including the implementation and the accounting of the service improvement programs and rate reductions directed by this order.

IT IS FURTHER ORDERED that Southwestern Bell Telephone Company shall and is hereby authorized to file tariffs and rate schedules consistent with this order and the findings set out herein.

IT IS FURTHER ORDERED that the revised rates and charges shall become effective immediately upon the filing of proper tariffs and rate schedules with this Commission and approval thereof by the Director of the Public Utility Division.

IT IS FURTHER ORDERED that Southwestern Bell Telephone Company shall submit as soon as reasonably possible, a private letter ruling request consistent with the purposes and findings set forth herein.

IT IS FURTHER ORDERED that Staff shall investigate and determine the adequacy of Southwestern Bell Telephone Company's labor tracking mechanism in Cause No. PUD 000662.

IT IS FURTHER ORDERED that Southwestern Bell Telephone Company shall assist the Staff in its investigation in Cause PUD 000662 concerning the Yellow Pages and that Staff shall apply to the Commission for an order requiring production of any information which is not produced in a timely manner.

CORPORATION COMMISSION OF OKLAHOMA

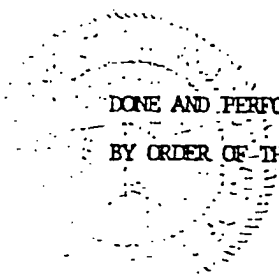
**DISSENT**

BOB ANTHONY, Chairman

*Bob Hopkins*  
BOB HOPKINS, Vice Chairman

Bribed Vote  
                      
                    

*James B. Townsend*  
JAMES B. TOWNSEND, Commissioner



DONE AND PERFORMED this 20 day of SEPTEMBER, 1989.

BY ORDER OF THE COMMISSION:

*Berden S. Holt*  
BERDEN S. HOLT, Secretary

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MOTLEY, JR., FOR AN INQUIRY ) CAUSE NO. PUD 000260  
INTO THE EFFECT OF THE 1986 TAX REFORM )  
ACT ON OKLAHOMA UTILITIES. )

DISSENTING OPINION OF CHAIRMAN BOB ANTHONY  
TO ORDER NO. 341630

**F I L E D**  
SEP 27 1989

SECRETARY  
CORPORATION COMMISSION  
OF OKLAHOMA

Chairman Bob Anthony, Dissenting.

I respectfully dissent from the majority position which, in final form, gives only minor or indirect benefit to the overwhelming majority of telephone customers who paid most of the overcharge. Just on principal, I believe some or all of the overcharge should be refunded to the broad base of telephone customers. Also, I feel a larger total amount could have been determined. (Particularly if no refund is to be made, a higher interest rate could have been applied. The "risk free" one year U.S. Treasury Bill yield gives a suitable rate for cash held only a short period before it is returned, but this "risk free" rate makes less sense for money kept to be invested in an equipment upgrade.) Furthermore, the financial information regarding Southwestern Bell Yellow Pages was terribly inadequate, and a higher profit amount could have been determined.

In general, I question the basic logic of the approach which was taken by the majority, but four calendar years of dealing with this matter should be enough. It is sad if Oklahoma has become the last state in the Union to resolve the tax overcharge issue with its Bell Telephone Company.

*Bob Anthony*  
Bob Anthony, Chairman



BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MOILEY, JR., FOR AN ) CAUSE PUD NO. 000260  
INQUIRY INTO THE EFFECT OF THE 1986 )  
TAX REFORM ACT ON OKLAHOMA UTILITIES. ) ORDER NO. 313853

HEARINGS: June 23, 1986, before the Commission en banc.

ML.  
JSD

APPEARANCES: Jane P. Olson for the Commission Staff,  
G. Michael Bauer for Southwestern Bell Telephone Company,  
Robert Butkin for Attorney General Robert Henry.

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma being regularly in session and the undersigned Commissioners being present and participating, this Cause comes on for hearing.

Procedural History

On October 23, 1986, Applicant filed an application in PUD Cause No. 000260 requesting that the Commission quantify the effect of the 1986 Tax Reform Act on certain public utilities, including Respondent.

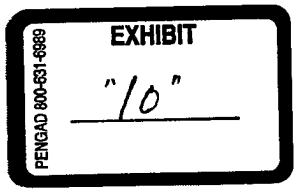
Respondent Southwestern Bell Telephone Company (Bell) and the other Respondent utilities participated in a Technical Conference conducted by the Commission Staff on November 10, 1986.

On June 10, 1987, Notice of Setting Hearing on the Rates of SWB was issued.

The Staff and Respondent entered into a Stipulation on June 23, 1987, whereby they agreed that if the Commission ultimately determines that a rate reduction is appropriate for Respondent, that said reduction would be effective as of July 1, 1987, in order to allow the full benefits of the Tax Reform Act to accrue to Respondent's customers.

Summary of Evidence

Dixie Linnenbrink, Manager of the Accounting Department of the Public Utility Division, appeared on behalf of the Commission Staff. Ms. Linnenbrink testified that the 1986 Tax Reform Act reduced the corporate income tax rate to 34% effective July 1, 1987 which equates to a 40% tax rate for the calendar year 1987. Ms. Linnenbrink further testified that the authorized rates of Respondent were based on an



income tax rate of 46%. Ms. Lirnenbrink further testified that Staff and Respondent had entered into a Stipulation, wherein they agreed if the Commission ultimately determines a rate reduction is appropriate for the Respondent that the reduction would be effective July 1, 1987, in order to accomplish an effective tax rate of 40% for 1987 and a 34% tax rate prospectively. She further stated that due to the number of utilities being investigated and the limited resources of Staff it would be at least two or three months before Staff could complete an audit and investigation of Respondent's books and records and make a recommendation in this cause. She speculated that a hearing could be held in September or October on Respondent's rates. Ms. Lirnenbrink testified that she therefore supported the Stipulation and recommended its adoption by the Commission.

Findings of Fact and Conclusions of Law

Upon full and fair consideration of the evidence and record in this cause, and being well and fully advised in the premises, the Corporation Commission makes the following findings and conclusions:

The Commission has jurisdiction in this Cause by virtue of the provisions of Article IX, Section 18 of the Oklahoma Constitution, 17 Okl. Stat. §131 et seq., and the Corporation Commission Rules and Regulations Governing and Regulating the Operations of Telephone Companies and Telecommunications in Oklahoma.

The Commission finds that the terms of the Stipulation are fair, reasonable and equitable and that it should be adopted. In accordance with the Stipulation, rates ultimately authorized in this case should reflect an income tax rate of 34% as of July 1, 1987; in order to allow the benefits of the 40% income tax rate for 1987 and a 34% tax rate prospectively to flow to the customers of Oklahoma. Therefore, a copy of the Stipulation is attached hereto, marked Attachment A, and incorporated by reference.

rt

re

ORDER

IT IS THEREFORE THE ORDER OF THE CORPORATION COMMISSION that the Stipulation, attached hereto as Attachment A, be and the same is hereby adopted.

IT IS FURTHER ORDERED that if the Commission ultimately determines that a rate reduction is required for Respondent, Southwestern Bell Telephone Company, that said reduction shall be effective July 1, 1987.

CORPORATION COMMISSION OF OKLAHOMA

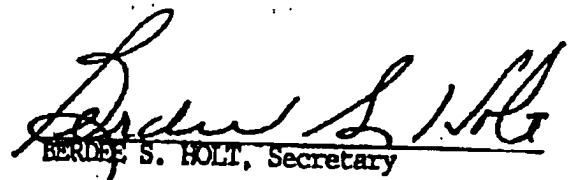
JAMES B. TOWNSEND, Chairman

  
BOB HOPKINS, Vice Chairman

  
NORMA EAGLETON, Commissioner

DONE AND PERFORMED this 23 day of JUNE, 1987.

BY ORDER OF THE COMMISSION:

  
BERDEE S. HOLT, Secretary

BRC:kg

FILED

JUN 23 1987

SECRETARY  
CORPORATION COMMISSION  
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA  
IN THE MATTER OF THE APPLICATION OF )  
HOWARD W. MOTLEY, JR., FOR AN )  
INQUIRY INTO THE EFFECT OF THE 1986 )  
TAX REFORM ACT ON OKLAHOMA UTILITIES. ) CAUSE PUD NO. 000260

STIPULATION BETWEEN STAFF AND  
SOUTHWESTERN BELL TELEPHONE COMPANY

Howard W. Motley, Jr., Applicant, on behalf of the Public Utility Division (Staff) of the Oklahoma Corporation Commission and Southwestern Bell Telephone Company (Respondent), hereby stipulate and agree as follows:

1. The 1986 Tax Reform Act which was signed by the President of the United States on October 22, 1986, lowered the corporate income tax rate from 46% to 34%, effective July 1, 1987. Respondent's currently authorized rates and charges are based on a 46% income tax rate.

2. Applicant filed an application herein requesting that the Commission quantify the effect of the 1986 Tax Reform Act on certain public utilities, including Respondent.

3. An investigation and audit must be conducted by the Staff in order for Staff to make a final recommendation in this cause. Respondent and Staff further acknowledge that Staff's investigation and audit will not be completed for several months due to the number of utilities being investigated and the limited resources of Staff.

4. In order to allow the full benefits of the 1986 Tax Reform Act to accrue to the benefit of Respondent's Oklahoma customers, Respondent and Staff agree that if the Commission, after hearing, ultimately determines a rate reduction is appropriate for Respondent, taking into account all known and measurable changes in Respondent's business, that said reduction will be effective as of July 1, 1987.

5. All parties to this Stipulation will cooperate in seeking its acceptance and approval by the Commission. If this Stipulation is not accepted and approved by the Commission without modification or condition, then it shall not be binding

on either party, and both parties shall in that event be deemed to have reserved all their respective rights and remedies in this proceeding.

6. It is agreed that nothing in this Stipulation shall constitute an admission by any part of the correctness or applicability of any claim, defense, rule or interpretation of law, allegation of fact, principle or method of ratemaking or cost of service determination. It is also agreed that, except as stated herein, the parties shall not be considered as necessarily agreeing with or conceding the applicability of any principle, method of ratemaking, cost of service determination, accounting method, design of rate schedule, terms and conditions of service, or the application of any rules or interpretation of law that may underlie, or may be thought to underlie, this Stipulation. It is further agreed that in any further negotiation or proceeding, other than any proceeding involving the honoring, enforcement or construction of this Stipulation, the parties shall not be bound or prejudiced by this Stipulation.

Dated this 23 day of June, 1987.

PUBLIC UTILITY DIVISION  
OF THE CORPORATION  
COMMISSION OF OKLAHOMA

SOUTHWESTERN BELL TELEPHONE COMPANY

By: Jane P. Olson  
Jane P. Olson  
400 Jim Thorpe Building  
Oklahoma City, OK 73105  
405/521-2255

By: G. Michael Bauer  
G. Michael Bauer  
800 North Harvey, Room 310  
Oklahoma City, OK 73102  
405/236-6754

Attorney for Howard W.  
Motley, Jr., on behalf  
of the Public Utility  
Division Staff

Attorney for Southwestern  
Bell Telephone Company