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February 9, 1999

FILED

FEB - 9 1999

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Missouri Public
Service Commission

**RE: Southwestern Bell Telephone Company to Provide In-Region InterLATA
Services/Section 271
Case No.: TO-99-227**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case is the original of the **Office of the Public Counsel's and State of Missouri's Joint Comments On Hearing Procedure Proposals A and B**. I have also on this date mailed and/or hand-delivered the appropriate number of copies to all counsel of record and other interested parties. Please "file" stamp the extra-enclosed copy and return it to this office. Thank you for your attention to this matter.

Very truly yours,

Michael F. Dandino
Senior Public Counsel

MFD:rjr

cc: Counsel of Record
Other Interested Parties

Enclosure

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED

FEB - 9 1999

Missouri Public
Service Commission

In the Matter of the Application of Southwestern)
Bell Telephone Company to Provide Notice of)
Intent to File an Application for Authorization to)
Provide In-Region InterLATA Services)
originating in Missouri Pursuant to Section 271)
of the Telecommunications Act of 1996.)

Case No.: TO-99-227

**OFFICE OF THE PUBLIC COUNSEL'S AND STATE OF MISSOURI'S
JOINT COMMENTS ON HEARING PROCEDURE PROPOSALS A AND B**

The Office of the Public Counsel ("Public Counsel") and the State of Missouri ("State") through the Missouri Attorney General's Office submit its Joint Comments on the proposed hearing procedures identified as Proposals "A" and "B".

1. As previously stated in the Joint Position Statement Regarding Hearing Procedure, Public Counsel and the State oppose time limitations on cross-examination, and specifically oppose such limitations for Public Counsel, the State, and the Staff of the Missouri Public Service Commission. The concern is rather for a full and fair hearing and a full and complete Commission record.

2. Proposal B (the Panel Approach), without the cross-examination time limitations, is the preferred method. It will allow cross-examination of a single witness or of the panel on checklist items or key issues as § 272, Track A, Public Interest, OSS and Performance Standards. This will assist the Commission and the parties to focus on an issue one at a time and to help organize the record by issue. However, the format must also allow flexibility to comment and

inquire into related topics, such as performance standards, which permeate all checklist items as questions arise from the Commission or parties.

3. After the Commission has posed its questions, the parties should be allowed the opportunity to ask questions based solely on Commission questions.

4. Proposal A provides for all parties to cross-examine a witness on the entirety of the witness' testimony all at one time and all in one session. This is inconsistent with the issue by issue approach to consider this application. It will unduly confuse the record by scattering testimony and cross-examination on the same issue throughout the transcript record. It also creates a problem for the afternoon panels if the cross-examination of the panel members is not completed by the afternoon.

In rate cases, this Commission has adopted a process where parties try one issue at a time. Even though a witness may testify on many issues, the cross is limited to the issue at hand. This procedure has proven effective. If A is adopted, it should proceed issue by issue.

5. The Commission should have the parties' views and testimony regarding the effect of the U.S. Supreme Court's decision in AT&T Corp. v. Iowa Utilities Bd., --U.S.-- (January, 1999). It is absurd to ignore this case in the application before the Commission. The Commission should allow supplemental testimony or briefing by the parties to demonstrate how or if this decision alters the relevant facts and applicable law.

6. Some parties maintain this is not a contested case which, therefore, allows curtailment of the right to present evidence, cross-examine witnesses and other procedural safeguards. Public Counsel and the State disagree; however, even if this is deemed an "uncontested case" under the Administrative Procedure Act, as a matter of public policy, this proceeding should be given the same dignity of a contested case. This is the most important

telecommunications case under the Federal Telecommunications Act of 1996 to come before this Commission. The stakes for the public, the consumers, the State of Missouri, Southwestern Bell Telephone Company ("SWBT"), and the state telecommunications industry are too high to adopt procedures which do not allow a full and fair hearing for the parties and encourage a full and complete record for the Commission.

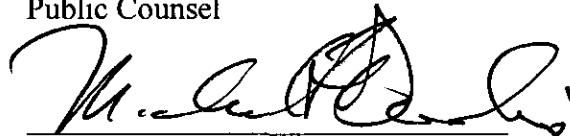
7. Public Counsel and the State should not be included in the Intervenor group of opponents. Public Counsel's and the State's positions and status are separate and distinct from the industry intervenors. Public Counsel has a specific statutory status as the public's representative. Public Counsel's position is to see that § 271 works both to open up local markets and to allow SWBT to enter the interLATA market since those outcomes are in the best interests of consumers. Though with a different constituency (state agencies who purchase service with taxpayer dollars), the State has similar hopes for a competitive market place. The Staff's position and Public Counsel's position on the application are not dissimilar. There is no basis to group Public Counsel with the "opponents" while Staff and the State are treated separately.

In light of the foregoing, Public Counsel and the State of Missouri ask the Public Service Commission to (1) adopt Proposal B; (2) eliminate time restrictions on cross-examination, especially for Staff, the State and Public Counsel; (3) recognize Public Counsel's separate and distinct role and not include it with Intervenor; (4) allow parties to question the panel based on Commission questions; (5) allow supplemental testimony and briefs on the impact of AT&T Corp. v. Iowa Utilities Bd.; and, (6) allow sufficient flexibility to give the parties a full and fair hearing and to enable the parties to present a full and complete record for the Commission as a basis for its recommendation to the Federal Communications Commission.

Respectfully submitted,

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By:



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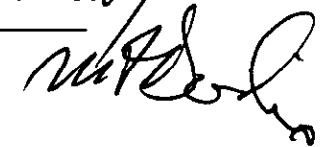
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 9th day of February, 1999 to the parties on the attached list:

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