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December 10, 2001

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

**FILED<sup>3</sup>**

DEC 10 2001

**Re: Southwestern Bell Telephone Company,  
Case No. TO-2002-185**

Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Office of the Public Counsel's Preliminary Brief**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to parties of record. 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:kh

cc: Counsel of Record

Enclosure

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
DEC 10 2001  
Missouri Public  
Service Commission

In the Matter of the Application of Southwestern )  
Bell Telephone Company to transfer property )  
And ownership of stock pursuant to Section ) Case No. TO-2002-185  
392.800, RSMo. )  
)

OFFICE OF THE PUBLIC COUNSEL'S PRELIMINARY BRIEF

COMES NOW the Office of the Public Counsel and respectfully suggests the following  
as its preliminary brief of the issues in this application.

**Introduction**

Public Counsel is not trying to unduly delay or torpedo SWBT's corporate reorganization plans. However, the purpose and intent of the Public Service law is to protect the public rather than promote the competitive advantage of utilities or increase their profits for the shareholders. In this light, Public Counsel believes that this application needs sufficient review so that this Commission can be assured that this transaction will not be detrimental to the public interest. To that end, Public Counsel raised issues and concerns that it suggests that the PSC investigate to assure itself and the public that the transaction will do no harm to the public interest. This entails examination of the regulatory status of SWBT now and the status of its successor after the transaction is completed. It is important that the before and after regulatory status be crystal clear prior to the PSC granting its *imprimatur* to this transaction. SWBT must demonstrate that this transaction is not detrimental to the public interest. Public Counsel has in good faith suggested some areas where the public interest could be adversely affected, but it is

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not required to conclusively prove that point. SWBT must show the PSC that those concerns are addressed by the transaction or do not arise under the transaction.

### **Franchise, Charter and Certificate of Service**

The new entity proposed to provide service in Missouri does not possess a certificate of convenience and necessity as of the effective date of House Bill 360 in 1987 and is not certified under Missouri statutes to provide telecommunications services now provided by the Missouri corporation SWBT Company. The Missouri corporation that presently operates under the charter grant will be dissolved at the end of the transaction. There is no authority to allow the new entity, a Texas limited partnership, to operate under the original charter grant until that new entity complies with the current statutory certification process under Sections 392.430, 392.450, 392.455, RSMo 2000. The Commission's standard process has been to require new applications for a certificate of authority if a new entity (new provider) proposes to succeed the present telecommunications provider in providing service to the previous providers customers. Under the facts in this application, there is no real difference. The new SBC company is not the present Missouri corporation now providing service and must obtain a certificate of service like any other telecommunications corporation or provider.

### **Price cap regulation.**

Public Counsel suggests that the new entity providing service in Missouri must qualify on its own terms for price cap regulation and meet the statutory requirements of Section 392.450, RSMo. Nothing in the statute allows that regulatory status to be transferred. In the sale of the GTE exchanges to Spectra Communications (TM-2000-182) the PSC did not have to directly address this aspect of the price cap issue since

Spectra did not suggest that it should be governed by the price cap statute provisions upon transfer and none of the parties disagreed. Like the certificate of authority, the price cap status is dependent on the provider meeting statutory prerequisites.

**Oversight of foreign corporations**

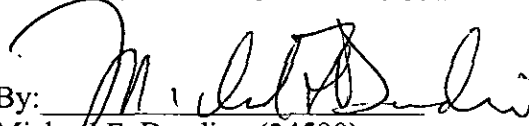
Public Counsel's concern here is the ability of the PSC's to have oversight of the change in ownership of telecommunications companies operating in Missouri when the transaction is made via transfer of stock in foreign holding companies. Section 392.300, RSMo. The PSC has declined to take jurisdiction in such case, including the SBC acquisition of Ameritech. The present transfer of ownership under this transaction underlines the cause for concern when it is the largest telecommunications provider in the state serving over 2.7 million customers. Effective oversight of the utilities, including ownership, is reflected in the rates and quality of service in the final analysis. *May Department Stores v. Union Electric Power and Light Co.*, 107 SW2d 41, 48 (Mo. 1937)

**Factual issues**

Public Counsel sees the key issues as legal issues on the regulatory status of the provider in Missouri before and after the transaction and does not see any issues of fact.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 

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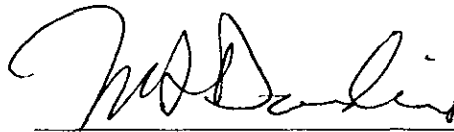
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 10th day of December 2001.

  
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December 10, 2001

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