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APR 24 2002

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

In the Matter of the Determination of Prices, )  
Terms, and Conditions of Conditioning for ) Case No. TO-2001-439  
xDSL-capable Loops. )

**OPPOSITION OF SOUTHWESTERN BELL TELEPHONE COMPANY  
TO REQUEST FOR LIMITED SUBSTITUTION OF COUNSEL**

COMES NOW Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company ("SWBT") and for its Opposition to the Request for Limited Substitution of Counsel ("Request") filed by IP Communications of the Southwest ("IP") states as follows:

1. IP filed its Request for Limited Substitution of Counsel on April 23, 2002. In the filing, IP seeks to reinsert Mr. Howard Siegel as a counsel of record in this proceeding.

2. IP's Request is improper under prior orders in this case and under applicable Missouri Supreme Court rule and should be rejected by the Missouri Public Service Commission ("Commission").

3. IP initially sought to file an Entry of Appearance on behalf of Mr. Siegel on June 15, 2001. The Commission issued its Order Granting Leave to Appear on June 22, 2001. Thereafter, on July 9, 2001, IP filed a Motion asking leave for Mr. Siegel to withdraw as counsel. IP stated: "Due to unforeseen circumstances, Mr. Siegel, in his position as Vice-President for Regulatory Policy will be testifying in this case, and as such cannot function as counsel of record." *Id.* at p. 1. (emphasis added) The Commission issued its Order Granting Leave to Withdraw as Counsel on July 12, 2001.

4. IP now seeks to reinsert Mr. Siegel as counsel of record in this proceeding. That Request is inconsistent with the withdrawal of Mr. Siegel as counsel as previously approved by the Commission and inconsistent with the terms of the Protective Order entered in this

proceeding. In addition, the Request is inconsistent with applicable Missouri Supreme Court Rule 4-3.7. That Rule precludes a lawyer from acting as an advocate in a trial in which the lawyer is a witness, with very limited exceptions. IP's Request just does not meet any of the identified exceptions.

5. IP's Request contends that refusal to permit Mr. Siegel to reinsert himself as attorney of record after having served as a witness in the proceeding would work a substantial hardship. That showing has not been made. The scheduled oral argument pertains to SWBT's Motion for Reconsideration and Rehearing as well as other filings made following the issuance of the Report and Order on February 28, 2002. IP's response to SWBT's Motion was a joint filing with AT&T Communications of the Southwest ("AT&T"). As IP has the identical position as AT&T, counsel for AT&T can surely present the argument contained in the combined IP/AT&T filing. If, contrary to the joint filing, AT&T is unable to present the joint position, then IP can certainly engage another counsel on its behalf.

6. It is also improper for Mr. Siegel, the Vice-President Regulatory for IP, to serve as counsel in this case as he would have access to Highly Confidential information that will likely be discussed at the oral argument. Staff's Pricing Report filed on March 14, 2002, contains Highly Confidential information to which Mr. Siegel is not entitled to access as a witness in this proceeding. Staff's Pricing Report is discussed in SWBT's Motion for Reconsideration and Application for Rehearing and will be a focal point of the oral argument. Other Highly Confidential material may also be discussed at the oral argument. As an employee of a party to the proceeding, Mr. Siegel is not entitled to have access to this material, but would gain access by reinserting himself as counsel of record for this proceeding. In Case No. TO-2001-440, a similar issue arose when Mr. Siegel refused to leave the room when Highly Confidential information

was discussed even though he was serving as a witness in that proceeding. T. 436-437, 508-512. Ultimately, the Commission rejected IP's attempt to permit Mr. Siegel to review the Highly Confidential information in his capacity as a witness. T. 585-586. A similar result should obtain here. Mr. Siegel is a witness for IP and, as such, does not have access to Highly Confidential information. But if permitted to act as counsel for IP in this proceeding, Mr. Siegel would have access to the very information which he was prohibited from reviewing as a witness in the case.

7. The attempt to reinsert Mr. Siegel as counsel for IP is improper. It is inconsistent with the prior Order granting IP's Request for Leave to Withdraw as Counsel, and it is inconsistent with the limited access to Highly Confidential information by employees of parties under the standard Protective Order. Moreover, under applicable Supreme Court rule, it is improper for a lawyer to act in a dual capacity as witness in the same proceeding, and IP has presented insufficient grounds to come within any exception to that rule.

WHEREFORE, for all the foregoing reasons, SWBT respectfully requests the Commission to deny IP's Request for Limited Substitution of Counsel.


Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were served to all parties on the Service List by first-class, postage prepaid U.S. Mail or hand-delivery on April 24, 2002.

  
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