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August 25, 1997

Mr. Cecil I. Wright
Executive Secretary
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

FILED

AUG 25 1997

**MISSOURI
PUBLIC SERVICE COMMISSION**

Re: Case No. TO-98-23

Dear Mr. Wright:

Enclosed for filing with the Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Motion To Dismiss And Opposition To Application to Intervene.

Please stamp "Filed" on the extra copy and return the copy to me in the enclosed self-addressed, stamped envelope.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Leo J. Bub
by TM

Leo J. Bub

Enclosure

cc: Attorneys of Record

FILED

BEFORE THE PUBLIC SERVICE COMMISSION AUG 25 1997
OF THE STATE OF MISSOURI

MISSOURI
PUBLIC SERVICE COMMISSION

GTE Midwest, Inc. Agreements with Southwestern Bell)
Telephone Company and United Telephone Company) Case No. TO-98-23
of Missouri.)

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
MOTION TO DISMISS AND OPPOSITION
TO APPLICATION TO INTERVENE**

Southwestern Bell Telephone Company respectfully moves to dismiss this case and opposes MCI Telecommunications Corporation's and MCImetro Access Transmission Services, Inc.'s Applications to Intervene. In support of its Motion, Southwestern Bell states:

1. In a March 18, 1997 Order dismissing MCI's complaint,¹ the Commission found that the Federal Communications Commission's August 8, 1996 Interconnection Order² required preexisting agreements between Class A carriers to be filed for approval by June 30, 1997. This requirement was contained in paragraph 171 of the Interconnection Order and in 47 CFR Section 51.303, the FCC rule setting out this requirement.

¹On June 17, 1996, MCI filed a Complaint against Southwestern Bell and GTE asking the Commission to Order Southwestern Bell and GTE to immediately submit all interconnection agreements negotiated before and after the enactment of the Telecommunication Act of 1996, to disclose the terms and conditions of those agreement to MCI, and to make available to MCI the services and elements provided under those agreements. Southwestern Bell's Answer and Motion to Dismiss explained that the Act was intended to be limited to interconnection agreements entered into in anticipation of the Act and not to include agreements between incumbent local exchange telephone companies entered into long before the 1996 Act. In addition, the Act does not require State Commission approval of agreements between incumbent LECs, only agreements between competing carriers.

²In the Matter of implementation of the local competition provisions in the Telecommunication Act of 1996, CC Docket No. 96-98 and Interconnection between local exchange carriers and commercial mobile radio service providers, CC Docket No. 95-185, first Report and Order, released August 8, 1996. (Interconnection Order).

2. Pursuant to the Commission's March 18, 1997 Order which followed the FCC mandate, GTE provided copies of Agreements it has with Southwestern Bell and United.

3. On July 3, 1997, the United States Court of Appeals for the 8th Circuit vacated FCC Rule 51.303 and the FCC's accompanying policy statements requiring the filing of preexisting agreements with State Commissions for approval. The Court ruled that the FCC exceeded its jurisdiction in promulgating Rule 51.303:

Section (2)(b), 47 USC Section 152(b), prevents the FCC from issuing regulations involving telecommunication matters that are fundamentally intrastate in character . . . the duties imposed by Sections 251 and 252 and the agreements fulfilling those duties almost exclusively involved local intrastate telecommunications services. Consequently, Section (2)(b) forecloses the ability of the Commission to determine which interconnection agreements must be submitted for state commission approval.³

4. While the Court's decision left this area to the State Commissions, the Missouri Commission has traditionally not required agreements between connecting telecommunications carriers to be filed with it for approval. Southwestern Bell respectfully requests the Commission to dismiss this case because there is no requirement for the Missouri Commission to conduct a review of these preexisting agreements.

5. In the event the Commission determines that these preexisting agreements should, apart from the vacated requirement in the FCC Interconnection Order, be submitted for approval, Southwestern Bell opposes the Commission's granting intervenor status to MCI.

³Iowa Utilities Board v. FCC, 1997 U.S. App. LEXIS 18, 183 at *53-54 (8th Cir. July 18, 1997).

Rather, it would be more appropriate to grant MCI participation without intervention consistent with the Commission's procedure for reviewing interconnection agreements.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

Copies of the foregoing document were served on the following parties by first-class, postage prepaid, U.S. Mail on August 25, 1997.

Leo J. Bub by tm
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