



Martha S. Hogerty  
Public Counsel

State of Missouri

Bob Holden  
Governor

**Office of the Public Counsel**  
Governor Office Bldg. Suite 650  
P. O. Box 7800  
Jefferson City, Missouri 65102

Telephone: 573-751-4857  
Facsimile: 573-751-5562  
Relay Missouri  
1-800-735-2966 TDD  
1-800-735-2466 Voice

October 29, 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>**

**OCT 29 2001**

**Missouri Public  
Service Commission**

**Re: Southwestern Bell Telephone Company,  
TO-2002-185**

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 Response and Request for Hearing**. 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**

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 RESPONSE AND REQUEST FOR A HEARING**

COMES NOW the Office of the Public Counsel and respectfully submits the following to the Missouri Public Service Commission as its response to the application of Southwestern Bell Telephone Company (SWBT), Southwestern Bell Texas, Inc., and Southwestern Bell Telephone, L.P. for the transfer and ownership of stock pursuant to Section 392.800, RSMo 2000. In addition, Public Counsel requests a hearing on the application.

1. Southwestern Bell Telephone Company (SWBT), Southwestern Bell Texas, Inc., and Southwestern Bell Telephone, L.P. filed an application on Friday, October 12, 2001 to seek PSC approval to convert SWBT from a Missouri corporation to a Texas limited partnership. After a series of transactions and mergers of holding companies and corporations and the conversion of a Texas limited liability corporation to a Texas limited partnership, the outcome will be the cessation of business by the Missouri corporation Southwestern Bell Telephone Company as a telecommunications company, public utility, and corporation with the newly created Texas limited partnership, Southwestern Bell Telephone, L.P., providing telecommunications services in Missouri.

The applicants have requested expedited approval. On October 17<sup>th</sup>, the PSC ordered that responses to the application be filed not later than Monday, October 29, 2001.

2. Public Counsel urges the Commission to take a close look at the proposed application and consider all of the ramifications of this proposed transaction in determining whether or not it is detrimental to the public interest. The transfer of assets and the reorganization and the cessation of business of the oldest and largest local telephone company in this state is a significant action that is worthy of close scrutiny. In particular, the PSC should look at the status of the new business entity that is proposed to provide local telephone and other telecommunications services to over two million Missouri customers. Although the applicants have requested expedited treatment, Public Counsel encourages the PSC not to make its determination based solely on a review of paper, but to hear testimony about the transaction and its effect on Missouri customers and on the PSC's regulatory authority over the new entity in the future. For this reason, Public Counsel requests a hearing on the application.

3. The application leaves a number of vital questions unanswered. One question is the status of the legal authority under which the Texas limited partnership will operate as a local telephone provider in Missouri. The application suggests that SWBT, L.P. will continue to provide service. However, Public Counsel understands that SWBT the Missouri corporation does not have a certificate of authority, but rather was chartered by the General Assembly prior to the Public Service Commission Act of 1913. With the demise of the Missouri corporation that has that charter, it seems reasonable that the new entity will be required to obtain a certificate of authority in order to continue telecommunications operations in SWBT's service territory. The application does not

specifically address that issue. Public Counsel believes that issue needs to be resolved at this time.

4. SWBT is a price cap telecommunications company under the provisions of Section 392.245, RSMo. That statute does not specifically authorize the transfer of that price cap status with the exchange of assets or with the transfer of stock ownership. Public Counsel suggests that the PSC needs to investigate and determine the regulatory status (rate of return or price cap) of the new entity resulting from this transaction. A reasonable requirement may be for the new operating entity to apply for price cap treatment. The price cap determination does not follow the assets as was demonstrated in the sale of some of the GTE Midwest exchanges to Spectra Communications. The continuation of the price cap regulatory system for SWBT, L.P. under the proposed transaction remains an open issue.

5. The outcome of the price cap issue by the PSC will have substantial impact on Missouri consumers. If SWBT, L.P. is not under price cap regulation, then it is a rate of return company. With that form of regulation, a different set of earnings, rate, and regulatory issues arise. If SWBT, L. P. is a price cap company by virtue of the transaction, what effect will the transaction have on the status of the petition for competitive services designation now pending in TO 2001-467? If the rationale behind the transaction is tax savings to the company, the price cap status is important as to the extent the ratepayers should share in that savings generated.

6. Public Counsel is concerned about the effect this transaction may have on the quality of service in Missouri. The applicants state that the transaction will be transparent to the customers, and it may very well be transparent at first. However,

Public Counsel is concerned what this continuing shift of control out of Missouri may signal for the future. The PSC should seek assurance of the applicants on the record that they are committed to maintaining quality of service and that the applicant's investment in telecommunications facilities in Missouri will not be adversely affected.

7. The "no adverse tax consequences" of the transaction seems targeted to property tax impact. (See, Exhibit D, Stephens Affidavit, that speaks to ownership of facilities and properties). Public Counsel suggests that the PSC should investigate or require a disclosure of the potential adverse corporate income tax impact, if any, and other potential adverse tax impact, if any, for state, municipalities and political subdivisions that may result from the transaction.

8. Public Counsel states that the timeframe available to review the application and prepare a response did not allow for a full or exhaustive examination of all of the impacts and concerns of this transaction. Public Counsel does not limit its concerns to those addressed here, but considers these issues to be major concerns. The question of whether or not this transaction will not be detrimental to the public interest cannot be definitively answered at this time given the information before the PSC. Public Counsel suggests that it is only after an investigation into the issues raised here and a clearer picture of the outcome is constructed can the PSC weigh the effect of this transaction on the public interest.

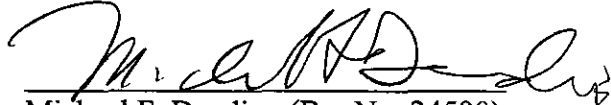
WHEREFORE, for the foregoing reasons, the Office of the Public Counsel suggests to the Public Service Commission that it hold a hearing on the application to consider the issues raised by Public Counsel and to obtain evidence necessary for its to

make a deliberate and informed decision on the transaction and its effect on the public interest.

Respectfully submitted,

**OFFICE OF THE PUBLIC COUNSEL**

**BY:**



Michael F. Dandino (Bar No. 24590)

Senior Public Counsel

200 Madison Street, Box 7800

Jefferson City, MO 65102

Telephone: (573) 751-5559

Facsimile: (573) 751-5562

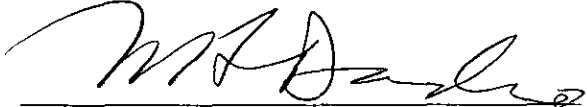
E-mail: [mdandino@mail.state.mo.us](mailto:mdandino@mail.state.mo.us)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed or hand delivered this 29th day of October, 2001 to the following counsel of record:

General Counsel  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

Mimi B. McDonald  
Southwestern Bell Telephone Company  
One Bell Center, Room 3510  
St. Louis, MO 63101



A handwritten signature in cursive script, appearing to read 'Mimi B. McDonald', is written over a horizontal line.