

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
September 12, 2001**

CASE NO: TO-2001-467

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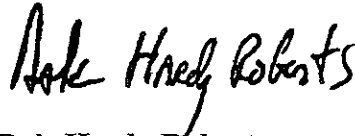
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Austin, TX 78701

Bradley R. Kruse
McLeodUSA Telecommunications Services,
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6400 C Street, SW, PO Box 3177
Cedar Rapids, IA 52406-3177

Enclosed find certified copy of an NOTICE OF EX PARTE in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified copies:

1-800-Reconex, Inc.
P.O. Box 40
2500 Industrial Avenue
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Adelphia Business Solutions
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American Communication Services
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Birch Telecom of Missouri, Inc.
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Buy-Tel Communications, Inc.
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Ciera Network Systems, Inc.
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Delta Phones, Inc.
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Global Crossing Telemanagement,
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Brooks Fiber Communications of
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Camarato Distributing, Inc.
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Computer Business Sciences, Inc.
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KMC Telecom III, Inc.
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AccuTel of Texas, Inc.
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ALLTEL Communications, Inc.
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BarTel Communications, Inc.
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BTI (Business Telecom, Inc.)
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P.O. Box 596
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The Cube
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1221 Nicollet Mall, Suite 300
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3625 Queen Palm Drive
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Cape Girardeau, MO 63702

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Payroll Advance
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Mountain Home, AR 72643

Phones for All
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Overland Park, KS 66214

Quick-Tel Communications, Inc.
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Boyd, TX 76023

Quintelco, Inc.
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Pearl River, NY 10965

Qwest Communications Corporation
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Arlington, VA 22203

Ren-Tel Communications, Inc.
7337 S. Mitchell Ct.
Villa Rica, GA 30180

Simply Local Services, Inc.
2225 Apollo Dr.
Fenton, MO 63026

Smoke Signal Communications
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Snappy Phone
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6901 West 70th Street
Shreveport, LA 71129

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Austin, TX 78752-2828

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Suretel, Inc.
5 North McCormick
Oklahoma City, OK 73127

TCG Kansas City, Inc.
Teleport Communications Group
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Staten Island, NY 10311

CG St. Louis
wo Teleport Drive, Suite 300
taten Island, NY 10311

Tel Com Plus
U.S. Telecommunications, Inc.
5251 110th Avenue North, Suite 118
Clearwater, FL 33760-4837

Teligent, Inc.
8065 Leesburg Pike, Suite 400
Vienna, VA 22182

el-Link, L.L.C.
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Bradenton, FL 34205

TranStar Communications
P.O. Box 211807
Bedford, TX 76095

Universal Telephone
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Wichita, KS 67211-5455

J.S. Telco, Inc.
P. O. Box 606
Wilsonville, OR 97070

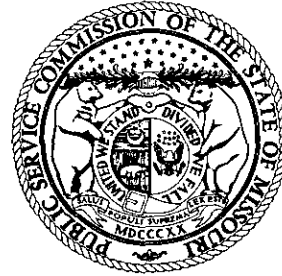
Winstar Wireless, Inc.
1615 L Street, NW, Suite 1260
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WorkNet Communications, Inc.
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St. Louis, MO 63105

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(f/k/a Nextlink Missouri, Inc.)
2020 Westport Center Drive
Maryland Heights, MO 63146

Notice of *Ex Parte* Contact

TO: Records Department:
All Parties in Case No. TO-01-467
All Commissioners



FROM: Commissioner Steve Gaw 

DATE: September 12, 2001

On September 7, 2001, I received the attached letter from Mr. William A. R. Dalton regarding the competition practices of Southwestern Bell Telephone Company. Because the letter also noted my recent concurring opinion in Case No. TO-99-227, I showed the letter and ensued a conversation with Regulatory Law Judge Nancy Dippell wherein it was concluded that portions of the letter could be construed as *ex parte* in Case No. TO-2001-467 regarding an investigation of the state of competition in the exchanges of Southwestern Bell Telephone Company. The Commission is currently considering this request and is bound by the same *ex parte* rule as a court of law.

Pursuant to 4 CSR 240-4.020(4) no person may attempt to sway the judgment of the Commission or a Regulatory Law Judge in a proceeding before the Commission outside the hearing process. Whenever such contact might occur 4 CSR 240-4.020(8) states: as *ex parte* communications (either oral or written) may occur inadvertently, any member of the Commission or Regulatory Law Judge who received the communication shall immediately prepare a written report concerning the communication and submit it to the Chair and each member of the Commission. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

Therefore, out of an abundance of caution, I think it appropriate to submit this notice of *ex parte* contact pursuant to the standards set out in the rules cited above. This will ensure that any party to this case will have notice of the contact and a full and fair opportunity to respond to the comments presented.

cc: Executive Director
Secretary/Chief Regulatory Law Judge
General Counsel



Bringing Power Home.

RECEIVED
SEP 7 2001

September 5, 2001

Steve Gaw

The Honorable Steve Gaw
Commissioner
Missouri Public Service Commission
200 Madison St.
P.O. Box 360
Jefferson City, MO 65102-0360

Dear Commissioner Gaw:

I read with interest your concurring opinion filed last week as a part of Case No. TO-99-227. My friend and fellow employee of City Utilities, Ken McClure, obtained a copy of your concurring opinion.

This letter relates to the relationship between SBC Communications ("Southwestern Bell") and City Utilities of Springfield, Missouri ("City Utilities"). It is our understanding that the application of Southwestern Bell to offer long distance in Missouri has been endorsed by the Missouri Public Service Commission and there is no longer a case pending before the Commission relating to this issue. We are advised that it is permissible under these circumstances to contact a member of the Commission about concerns we have with a regulated telephone provider.

Although City Utilities has long had a mutually beneficial relationship with Southwestern Bell sharing utility poles and working in a cooperative manner, City Utilities remains concerned about the efforts of Southwestern Bell to offer long distance service in Missouri. We understand the application filed with the Missouri Public Service Commission and the Federal Communications Commission includes a representation that Southwestern Bell's local service markets are competitive and Southwestern Bell is, in effect, actively promoting competition in Missouri's telecommunications market.

City Utilities developed an extensive fiber optics network in the Springfield area, primarily to serve the needs of the electric utility. This fiber optics network enables City Utilities to provide its electric utility with faster, reliable, economical telecommunications service between the facilities of the electric utility. By its nature, this fiber optics network has excess capacity that can be made available to our citizens for commercial and residential use and to other telecommunication providers. The use of the

existing fiber optics network already in place would have enabled other telecommunication providers to immediately offer competitive services to Southwestern Bell. The availability of this fiber optics networks would have alleviated the need for other telecommunication providers to install duplicate fiber optic lines on poles, and from tearing up our streets and rights-of-way for the installation of underground fiber. There was an opportunity for immediate competition to Southwestern Bell, which would have had the effect of not only improving the level and availability of telecommunications services, including high-speed Internet services, but would have had the effect of lowering prices to the customer because of the availability of competition. Customers would have had choice.

As members of the General Assembly well know, Southwestern Bell mounted one of the most aggressive lobbying efforts known in the history of the Missouri legislature to limit the ability of political subdivisions to offer telecommunication services. Southwestern Bell retained an army of lobbyists estimated by public records disclosure to be one lobbyist for every two members of the General Assembly. This effort resulted in passage of House Bill 620 (392.410(7) R.S.Mo.) in 1997, which limits political subdivisions from making their telecommunications facilities available for use by other telecommunication providers, and limits the use of their public facilities, constructed at public expense to be used for the benefit of the public. This statute effectively eliminates the ability of political subdivisions to provide competition to Southwestern Bell.

This egregious action by Southwestern Bell was taken for no reason other than to stifle competition in Missouri, and passage of House Bill 620 has been very effective in stifling competition.

Some political subdivisions, including City Utilities, sought relief from the limitations of House Bill 620 and requested that the Federal Communications Commission "preempt" House Bill 620. This preemption petition is based on provisions of the 1996 Telecommunications Act which was passed to promote competition in telecommunications. Section 253(a) of the Act prohibits states from enacting statutes that prohibit or have the effect of prohibiting the ability of any entity to provide telecommunications services.

Southwestern Bell filed extensive comments with the FCC urging the them to deny the petition for preemption. The FCC did deny the petition of City Utilities and an appeal is pending in the 8th Circuit Court of Appeals. Again, Southwestern Bell is overtly opposing competition in Missouri and has intervened in the Court case, filing a 28-page brief urging the 8th Circuit to reject the challenge to the order of the FCC and to deny competition in Missouri.

In its brief filed in the 8th Circuit case, Southwestern Bell acknowledges that House Bill 620 "sunsets in less than a year and a half, requiring the Missouri General Assembly to revisit its policy judgment at that time." (Intervenor's Southwestern Bell

Brief, p. 25). One might inquire of Southwestern Bell if it will again impose its will on the General Assembly and champion either an extension of House Bill 620 or a more draconian measure to limit competition in Missouri.

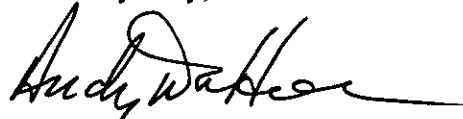
It seems to us there are legitimate questions to be answered by Southwestern Bell in its proceeding now pending before the Federal Communications Commission. Will Southwestern Bell continue in its effort to limit competition in Missouri and stifle the ability of political subdivisions to use their telecommunications facilities for the benefit of the public? It is incredible to think that SBC Communications, the \$28 billion telecommunications behemoth, who publicly favors competition rather than monopoly power, would be fearful of competition from Missouri political subdivisions, and would continue on its past course of doing all within its power (and that power is awesome) to limit the ability of political subdivisions to compete in Missouri. We know what Southwestern Bell has done in the past. What will it do in the future? Does Southwestern Bell really want competition? The answer is obvious. It does not.

City Utilities is in the process of filing an objection with the Federal Communications Commission in the case now pending before the Commission. We have expressed these same views in that proceeding.

Please accept this letter as a form of complaint or an expression of concern about the activities of Southwestern Bell, as those activities relate to the ability of City Utilities to engage in competition with Southwestern Bell in the Springfield area telecommunications market.

Thank you for your consideration of these comments.

Yours very truly,

A handwritten signature in black ink, appearing to read "Andy Dalton", written over a horizontal line.

William A. R. Dalton
General Counsel

WARD:lt

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 12th day of Sep. 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

