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December 3, 1998

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

FILED
DEC 3 1998
Missouri Public
Service Commission

RE: Southwestern Bell Telephone Company
Case No.: TO-99-227

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case is the original and 14 copies of the **Office of the Public Counsel's Response to Intervenors' and Staff's Motions**. Please "file" stamp the extra-enclosed copy and return it to this office. I have also on this date mailed, faxed and/or hand-delivered the appropriate number of copies to all counsel of record.

Thank you for your attention to this matter.

Sincerely,

Martha S. Hogerty
Public Counsel

MSH:rjr

cc: Counsel of Record

Enclosure

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED
DEC 3 1998
Missouri Public
Service Commission

In the Matter of the Application of Southwestern)
Bell Telephone Company to Provide Notice of)
Intent to File an Application for Authorization to)
Provide In-Region InterLATA Services)
Originating in Missouri Pursuant to Section 271)
Of the Telecommunications Act of 1996.)

Case No.: TO-99-227

**OFFICE OF THE PUBLIC COUNSEL'S
RESPONSE TO INTERVENORS' AND STAFF'S MOTIONS**

COMES NOW the Office of the Public Counsel ("Public Counsel") and states the following to the Public Service Commission of the State of Missouri ("Commission") as follows in response to the motions filed by Intervenor, AT&T, MCI, and Staff relating to the filing and procedural schedule for Southwestern Bell Telephone Company's ("SWBT") Notice of Intent to File the Section 271 Application with the Federal Communications Commission ("FCC"):

1. Public Counsel suggests to the Commission that it is not locked into a 120-day window in which to set a procedural schedule, have parties file testimony and conduct discovery, hold hearings, review briefs filed by the parties, consider all of the evidence and legal arguments, and make a final decision which will serve as the Commission's findings and recommendations to the FCC. This time frame is of the Commission's own making to give it and the other parties sufficient time and flexibility to properly review SWBT's Section 271 filing. Contrary to SWBT's claim and AT&T's proposed procedural schedule, the Commission is not compelled to "complete the process within the 120-day period previously directed." SWBT's Application,

p.3. The Federal Telecommunications Act of 1996 does not mandate a time frame for the state body to act in its consultation role. The FCC must issue a decision approving or rejecting the application within 90 days of its filing with the FCC. This Commission could extend its consideration period a reasonable time into that 90-day period without losing jurisdiction or without having unduly delayed the process.

2. If time constraints and scheduling becomes an issue, SWBT can certainly delay its filing of its Section 271 application with the FCC to accommodate the Missouri proceedings that are instrumental to the outcome of its FCC application. The Company's filing in Missouri on November 20th was to be at least 120 days before it filed with the FCC. SWBT is not required to file on the 120th day following November 20th, but can in its discretion postpone the filing a reasonable amount of time. There is also the option that the Commission can make that request to the Company or perhaps make that part of the order establishing the procedural schedule.

3. Public Counsel is not at this time proposing a specific procedural schedule, but is concerned that the Commission and the parties will perceive a hard and fast 120-day period as mandatory and not allow sufficient time to examine the evidence.

4. SWBT should not have any objections to expanding the 120 period or adjusting the time period given that: (1) the filing on November 20th was not in compliance with the Commission's Order in Case No. TO-97-56 regarding service of all parties, (2) the timing of the filing was the Friday before the Thanksgiving holiday; (3) the filing was made a little over a week prior to the commencement of a long scheduled a seven-day evidentiary hearing in the Missouri Universal Service Costing Model docket in which Staff, Public Counsel and most of the other parties to Case No. TO-97-56 are participants, and (4) the filing was made less 30 days

prior to the Christmas/Hanukkah/New Year's Day holiday season. All of these factors concerning SWBT's timing of its filing practically limits the availability of Staff, experts and business days to review the filing and the testimony and draft application and prepare testimony, pleadings and discovery in response to this November 20th filing, all to SWBT's advantage. The Commission should set reasonable time tables which do not reward SWBT for its failure to follow the Commission's orders and does not reward SWBT and punish the other parties by SWBT's total control of the timing of its filing.

5. Public Counsel agrees with Staff, MCI, and AT&T that the 120-day period should not be considered to have begun until SWBT certifies that it has complied with the Commission's Order on service in Case No. TO-97-56. Public Counsel generally supports the procedural process outlined by AT&T for discovery and hearings, but believes the Commission should adjust the timing of the procedural events based on proper time considerations rather than a strict 120-day time period as discussed above.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission to establish a reasonable procedural schedule in accordance with Public Counsel's suggestions.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been faxed, mailed, or hand-delivered to the following counsel of record on this 3rd day of December, 1998:

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