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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Petition of MCI)
Telecommunications Corporation for an)
Investigation Under Section 271 of)
the Telecommunications Act of 1996.)
CASE NO. TO-97-56

NOTICE

On May 20, 1998, representatives of AT&T and MCI, along with other interested parties, attended the Commission's Agenda meeting for the purposes of sharing comments with the Commissioners regarding potential procedures for use in this or a related case. During that presentation a representative of AT&T shared with the Commissioners and other staff members in attendance a copy of the attached document. This document should be filed and copied to all parties to this case so that any party wishing to respond to the contents therein may have the opportunity to do so. The Commission notes that some items within this document are in quotation marks, and the source of authority for those quotes is listed. There are other items which are shown in quotation marks, but for which no authority is cited, and those statements are, therefore, attributed to the offeror, AT&T.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

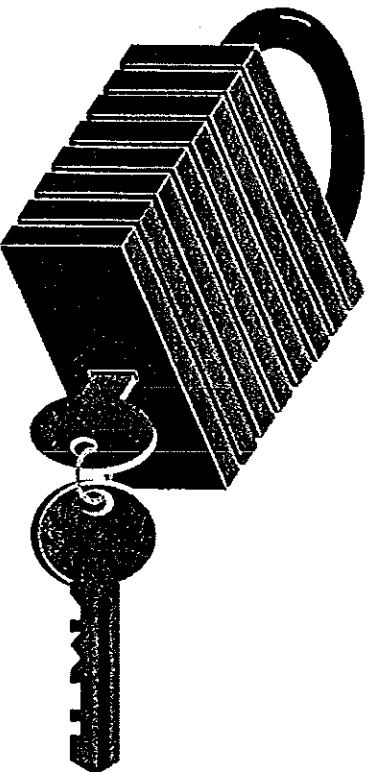
(S E A L)

Dated at Jefferson City, Missouri,
on this 22nd day of May, 1998.

Roberts, Chief Regulatory Law Judge

Perspectives on Section 271

Under 271, SWBT holds the keys to
long-distance relief





The key is implementation

- ◆ Under both Track A and Track B, SWBT is required to make each checklist item “available as a legal and practical matter”
 - “concrete and specific legal obligation to furnish the item upon request”
 - must demonstrate that it is “presently prepared” to furnish each item “in the quantities that competitors may reasonably demand and at an acceptable level of quality”

Missouri PSC's role is critical

- ◆ State commissions' "knowledge of local conditions and experience in resolving factual disputes affords them a unique ability to develop a comprehensive, factual record" (Ameritech Order, para. 30)
- ◆ FCC will “consider carefully state determinations of fact that are supported by a detailed and extensive record.”

FCC conducts “independent assessment”

- ◆ Not bound by State legal determinations
- ◆ Will consider facts beyond those presented in State proceedings
- ◆ The deference afforded a State will turn on the "nature and extent of State proceedings to develop a complete record concerning the applicant's compliance with section 271 and the status of local competition" (Ameritech Roadmap Order, para. 30).

Key FCC themes

- ◆ "a comprehensive factual record"
- ◆ "a detailed and extensive record"
- ◆ "a detailed, critical assessment"
- ◆ "clear and incisive evaluation"

DOJ has a similar yardstick

- ◆ DOJ, like the FCC, underscores the importance of:
 - an "adequate record" and "detailed factual findings"
 - use of the "proper legal standards"
 - "reasoned decisions"

Thus,

Even where a State proceeding might appear to include elements of a proper evidentiary hearing, the FCC properly will disagree absent:

- proper factual findings,
- application of the proper legal standard, and
- reasoned determinations.

State proceeding multi-purpose

- ◆ A rigorous State process:
 - provides guidance to the BOC,
 - fosters opening of the local market,
and
 - informs the FCC.

Standard of Review

- ◆ Burden of proof on applicant
- ◆ Preponderance of evidence
- ◆ Shift from competitors' exposing weaknesses to applicant affirmatively producing detailed data demonstrating complete compliance

Distinguish from Arbitration

- ◆ Implementation versus contract terms
- ◆ Performance versus specifications

Also:

- ◆ Extent and nature of local competition
- ◆ Separate subsidiary issues
- ◆ Public interest generally

Nature of the Process

- ◆ The process has proven fact-intensive, complex and painstaking
- ◆ State commission proceeding must answer the “difficult questions”

The “difficult questions” include . . .

- ◆ Does SWBT even agree with its legal obligations?
- ◆ Is each checklist item available as a legal and practical matter?
- ◆ Is there a concrete and specific legal obligation to provide each checklist item?

Difficult questions include . . .

- ◆ Is SWBT presently prepared to furnish each checklist item:
 - in the quantities that competitors may reasonably demand, and
 - at a commercially viable level of quality?
- ◆ What has SWBT's course of dealing with CLECs been?

Difficult questions include . . .

- ◆ Has SWBT demonstrated actual compliance with its statutory obligations?
- ◆ How has it made that demonstration?
- ◆ Has there been actual commercial usage?
 - How much?
 - By whom?
 - What has been the experience?
- ◆ If there has not been commercial usage, why not?₁₅

Difficult questions include . . .

- ◆ Has there been testing?
 - What has been tested?
 - Who has done the testing?
 - Who could have done the testing?
 - Have all results and underlying information been made available, with adequate explanation?
 - Has the testing been improperly restricted?
- ◆ Etc.

Hallmarks of a good proceeding

- ◆ Efficient use of discovery and hearing to
 - develop a cogent, detailed, and comprehensive record
 - through the participation of all interested parties
- ◆ Elicit relevant facts and data that might otherwise be unavailable
- ◆ Adequate opportunity for cross-examination

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION