

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

October 30, 1997

CASE NO: TO-98-115

Office of the Public Counsel, P.O. Box 7800, Jefferson City, MO 65102

**Paul G. Lane, Diane J. Harter, Leo J. Bub, Anthony K. Conroy, Southwestern Bell
Telephone Company, 100 N. Tucker, Room 630, St. Louis, MO 63101**

Paul S. DeFord, Lathrop & Gage, L.C., 2345 Grand Blvd., Kansas City, MO 64108

Mark Witcher, AT&T Communications, Suite 1500, 919 Congress, Austin, TX 78701

Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in cursive script, appearing to read "Cecil I. Wright".

**Cecil I. Wright
Executive Secretary**

Uncertified Copy:

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of October, 1997.

In the Matter of AT&T Communications of the)	
Southwest, Inc.'s Petition for Second Compulsory)	
Arbitration Pursuant to Section 252(b) of the)	<u>Case No. TO-98-115</u>
Telecommunications Act of 1996 to Establish an)	
Interconnection Agreement with Southwestern Bell)	
Telephone Company.)	
)	

ORDER ADOPTING PROCEDURAL SCHEDULE

AT&T Communications of the Southwest, Inc. (AT&T) filed a petition on September 10, 1997, for a compulsory arbitration to establish terms of an interconnection agreement with Southwestern Bell Telephone Company (SWBT).

AT&T pointed out in its petition that it had filed a similar petition on July 29, 1996, initiating Case No. TO-97-40 ("first arbitration case"). In the first arbitration case, the Commission issued its Final Arbitration Order on July 31, 1997. According to AT&T, the issues resolved in the Commission's July 31 order will permit it to enter the local exchange market in Missouri on a resale basis, once the implementing agreement is filed and approved. AT&T alleged, however, that the agreement implementing the Commission's July 31 order would not be sufficient to enable AT&T to enter the local exchange market through the use of unbundled network elements or AT&T's own facilities. AT&T attached appendices (appendices) containing approximately 200 unresolved issues for arbitration.

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SWBT filed its response to AT&T's petition on October 3. SWBT did not file a motion to dismiss AT&T's petition, but stated in its response that many of the issues identified by AT&T were either previously resolved in the first arbitration case or duplicative of other issues in the appendices.

On October 17, the Commission ordered the parties to appear on October 27 to answer the Commission's questions about the proper procedure in this case and the Commission's jurisdiction to entertain AT&T's petition. In the same order, the Commission required AT&T and SWBT to negotiate with the assistance of the Commission's Staff (Staff) and to file a pleading by October 24 listing any remaining issues. A specific group of Staff members (Arbitration Advisory Staff) met with the parties to clarify the issues. On October 24, AT&T and SWBT filed a Joint Issues List. The Joint Issues List clarified that 27 issues and subissues had been "deleted," "removed" or "resolved" since the filing of AT&T's petition, that 13 issues and subissues had been merged with other issues, and that 160 issues and subissues remained.¹

AT&T, SWBT, Staff² and the Office of the Public Counsel (OPC) appeared at the October 27 hearing and answered the Commission's questions. At the hearing, AT&T and SWBT indicated that they would like for the Commission to issue an arbitration order to resolve the disputed issues.

¹ The Commission notes that AT&T's appendices, and the Joint Issues List, contain issues and subissues with their own headings, as well as some issues with subparts and multiple questions that do not have separate headings. The approximation of 200 issues identified in the Joint Issues List includes only issues and subissues with separate headings. The actual number of issues that remain, including all of the subissues, subparts and individual questions within them approximates 241.

² Although Staff is not a party to this proceeding, the Commission requested Staff to appear at the hearing and answer the Commission's questions.

Staff and OPC supported the arbitration of AT&T's and SWBT's dispute by the Commission so as to accelerate the introduction of competition in the basic local telecommunications market. AT&T and SWBT stated that they were not willing to waive their rights to appeal the substantive determinations made in any final Commission arbitration order, but both parties stated they would not raise the jurisdictional issue on appeal if the Commission commits its resources to arbitration of the remaining issues. AT&T and SWBT stated that they did not anticipate any dispute over the issues raised in this arbitration at the time the first arbitration case was decided by the Commission. However, the Commission notes that many of the remaining issues could have been raised in the first arbitration if the parties had carefully considered their interconnection needs and consulted appropriate experts at an earlier point in time. AT&T and SWBT claim to have been aware of the existence of these issues since April, but did not bring them to the Commission's attention until September 10 and have failed to resolve them to date.

The Commission has already devoted significant resources to resolving the parties' disputes, both in the first arbitration case and in this case. Nevertheless, the resolution of the remaining disputes will enable AT&T to implement interconnection with SWBT and thereby speed the introduction of competition in the local exchange telecommunications market in Missouri. Therefore, the Commission concludes that it will grant the motion for a final round of arbitration on the remaining issues. The parties represented at the October 27 hearing that they have presented the Commission with all remaining unresolved issues necessary for the implementation of an effective interconnection agreement. The Commission will not grant any motions for further arbitration of matters concerning

interconnection between AT&T and SWBT prior to expiration of the term of the agreement implementing the Commission's final order in Case No. TO-97-40. The Commission will establish an expedited procedural schedule to ensure that arbitration of the remaining issues is completed as soon as possible. The following conditions shall apply.

A. The Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. In this proceeding, the prefiled testimony shall set forth specific language proposed by the filing party for resolving the remaining issues in dispute and shall support the filing party's reason for proposing that language. The prefiled testimony shall address each issue in the same order and under the same headings and issue numbers as did the Joint Issues List filed on October 24. The Commission expects the parties to comply with the requirements of 4 CSR 240-2.130, including the filing of testimony on line-numbered pages.

B. Testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless a protective order has first been established by the Commission. The party that considers the information to be proprietary or highly confidential should request a protective order. Any testimony or schedule filed without a protective order first being established shall be considered information open to the public.

C. The Commission's General Counsel, Dana K. Joyce, will serve as a Special Master in this proceeding. The Special Master and the Arbitration Advisory Staff shall meet with AT&T, SWBT and OPC during the period of November 10 through November 20 for the purpose of assisting the parties in resolving the disputed issues. The parties shall use the meeting with the Special Master to eliminate issues through compromise and

through clarification of misunderstandings, explanation of an issue's interrelationship with other issues, and correction of clerical or arithmetical errors.

D. AT&T and SWBT shall jointly file a Settlement Document. This pleading shall identify the issues from the October 24 Joint Issues List that have been resolved as of the date of the Settlement Document and shall set forth the specific language upon which AT&T and SWBT have agreed concerning each of the resolved issues. No issue shall be identified as settled if AT&T and SWBT have not agreed to specific language. The Settlement Document shall reference the same headings and issue numbers as did the October 24 Joint Issues List.

E. The parties and Special Master shall file a Statement of Remaining Issues, which shall take the form of a single pleading filed jointly by AT&T, SWBT and the Special Master. This pleading shall identify, in matrix format, each issue which remains in dispute. The pleading shall address each issue in the same order and under the same headings and issue numbers as did the October 24 Joint Issues List. For each issue, the pleading shall contain the language proposed by AT&T, the language proposed by SWBT, and the Special Master's recommendation to adopt either the AT&T language or the SWBT language, along with the Special Master's explanation of his position. The pleading shall be filed on the date established in this order.

F. AT&T, SWBT and the Special Master shall ensure that all of the issues in the Joint Issues List filed by AT&T and SWBT on October 24 are addressed in either the Settlement Document or Statement of Remaining Issues.

G. AT&T and SWBT shall be permitted to file responses to the recommendations of the Special Master by the date established in this order.

H. OPC shall be permitted to file responses to the Statement of Remaining Issues by the date established in this order.

I. Responses to the Statement of Remaining Issues and to the recommendations of the Special Master shall be limited to 30 pages.

J. All pleadings shall be filed in accordance with 4 CSR 240-2.080. All pleadings and testimony shall be filed both in paper form and on 3½" x 5" diskettes in WordPerfect 6.1 format, and shall employ the same headings and numbers to identify the issues that were employed in the Joint Issues List filed on October 24. For example, AT&T and SWBT identified the issue of whether SWBT and AT&T should "jointly develop process metrics requirements for new processes and electronic interfaces that are implemented between AT&T and SWBT" as Issue 6 of Section III. Throughout this arbitration, the parties will refer to this substantive issue as Issue 6 of Section III, whether it is resolved prior to November 21 or must be resolved by the Commission.

K. Following the deadline established in this order for AT&T and SWBT to file their Settlement Document, AT&T and SWBT shall not be permitted to withdraw issues from the Statement of Remaining Issues by settling them. Rather, all issues not settled as of the deadline for filing of the Settlement Document and the Statement of Remaining Issues shall be resolved by the Commission as it deems appropriate. The Commission may rely on its own experts in reaching a final arbitration decision.

IT IS THEREFORE ORDERED:

1. That the following procedural schedule be adopted for this proceeding, subject to the conditions discussed above:

Direct testimony to be filed by - November 7, 1997
AT&T and SWBT 3:00 p.m.

Settlement document to be filed by - November 21, 1997
AT&T and SWBT 3:00 p.m.

Statement of Remaining Issues - November 21, 1997
to be filed jointly by AT&T, SWBT 3:00 p.m.
and Special Master

Deadline for AT&T and SWBT to - November 26, 1997
file responses to recommendations 3:00 p.m.
of Special Master

Deadline for OPC to file response - November 26, 1997
to Statement of Remaining Issues 3:00 p.m.

2. That the Commission's General Counsel, Dana K. Joyce, shall serve as Special Master in this proceeding.

3. That the Special Master and the Arbitration Advisory Staff shall meet with AT&T, SWBT and OPC during the period of November 10 through November 20 for the purpose of assisting the parties in resolving as many of the disputed issues as possible and otherwise complying with the conditions established in this order.

4. That no hearing shall be held in this case.

5. That the Commission will base its arbitration order on the pleadings filed in this case and in Case No. TO-97-40, as well as on any technical expertise provided by the Commission's Staff.

6. That this order shall become effective on October 30, 1997.

BY THE COMMISSION

A handwritten signature in cursive script, reading "Cecil I. Wright".

**Cecil I. Wright
Executive Secretary**

(S E A L)

Lumpe, Ch., Crumpton, Drainer
and Murray, CC., concur.

Randles, Regulatory Law Judge

ALJ/Sec'y:

Ronelles Pope

10-29
Date Circulated

T0-98-115
CASE NO.

Zobrist, Chairman

Crumpton, Commissioner

Murray, Commissioner

Lumpe, Commissioner

Drainer, Vice-Chair

10-30
Agenda Date

Action taken:

4-0AA

Must Vote Not Later Than

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 30th day of October, 1997.

Cecil I. Wright

Cecil I. Wright
Executive Secretary