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

In the Matter of the Application of )  
Fidelity Communication Services II, Inc. )  
for a Certificate of Service Authority to )  
Provide Basic Local Telecommunications ) Case No. TA-2000-229  
Service in Portions of the State of )  
Missouri and for Competitive Classification )

**ORDER GRANTING INTERVENTION AND DIRECTING**  
**FILING OF PROCEDURAL SCHEDULE**

Fidelity Communications Services II, Inc. (FCS) applied to the Missouri Public Service Commission (Commission) on September 10, 1999, for a certificate of service authority to provide basic local, local exchange and exchange access telecommunications services in portions of the state of Missouri under Sections 392.420-.440, RSMo 1994<sup>1</sup>, and Sections 392.410 and 392.450, RSMo Supp. 1998. FCS asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. FCS is a Missouri corporation with principal offices located at 60 North Clark, Sullivan, Missouri 63080.

The Commission issued a notice and schedule of applicants on September 14, 1999, directing interested parties wishing to intervene to do so by October 14, 1999.

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

On October 7, 1999, Southwestern Bell Telephone Company (SWBT) timely filed its application to intervene. SWBT stated that it has an interest because it provides basic local exchange services and will be in direct competition with FCS if the certificate is granted. SWBT stated that FCS has requested service authority in exchanges served by GTE Midwest Incorporated. SWBT stated that it terminates intraLATA interexchange calls to these areas, and will be directly impacted by the level of access charges assessed by FCS on such calls. SWBT argued that no other party will adequately protect its interests in this matter and that its intervention would be in the public interest because of SWBT's expertise and experience in the telecommunications industry.

On October 13, 1999, FCS filed its objection to the application to intervene. FCS stated that the concerns expressed by SWBT about access charges are matters to be dealt with in a tariff proceeding and not in the initial application for a certificate of service authority. FCS stated that SWBT's attempt to intervene is premature and is not relevant to the issues. FCS stated that the intervention would not be in the public interest and that SWBT would have the opportunity to intervene in the tariff proceeding at such time as that application is filed. FCS cited no authority for any of its positions.

On October 18, 1999, SWBT filed its response to FCS's objections. SWBT stated that FCS's request for certification as a competitive telecommunications company makes the access charge issue both relevant and necessary for resolution in this proceeding. SWBT quoted Section 392.361(3), RSMo, which states in part that the Commission, in a

certification case, must make a finding that "...all telecommunications services..." offered by an applicant such as FCS "...are competitive telecommunications services" (emphasis by SWBT). SWBT stated that, by their very nature, FCS's switched access services will be noncompetitive. SWBT quoted extensively from the recent ALLTEL CLEC case, i.e., TA-99-298, including where the Commission stated:

The interexchange carrier does not have a choice about which LEC will terminate or originate a given call....[T]here is a fear among interexchange carriers that a LEC could take advantage of the situation to charge exorbitant rates for providing switched access services....Therefore, without the imposition of some safeguards, a competitive local exchange carrier...would be able to impose any interexchange access rates that it chose....[S]witched access services are, by their nature, noncompetitive.

SWBT continued that this same issue exists in this case because FCS has requested competitive status when, in fact, the switched access services it will be providing will not be competitive. SWBT stated that in every case in which a CLEC has applied for certification to provide basic local service as a competitive telecommunications company, the Commission has addressed and resolved this statutory issue in the CLEC's basic local certification case and not in the CLEC's tariff proceeding. SWBT stated that in every case, the Commission has permitted carriers that will be affected by the level of the CLEC's access rates to intervene in the CLEC's certification proceeding.

SWBT stated that it does not oppose FCS receiving a certificate of service authority to provide basic local telecommunications service, nor does it oppose FCS receiving the competitive classification under the same terms and conditions which the Commission has applied to every other

CLEC in Missouri. SWBT stated that permitting it to participate in this case would advance the public interest and be consistent with the approach the Commission has taken in all other CLEC certification cases.

No other entity besides SWBT applied to intervene. The Commission has reviewed the application and finds that it is in substantial compliance with Commission rules regarding intervention, that the applicant has an interest in this matter that is different from that of the general public, and that granting intervention would be in the public interest. The Commission concludes that this request for intervention should be granted and that the parties should file a proposed procedural schedule. The procedural schedule must include dates for the filing of testimony and for a hearing. If no party requests a hearing, the Commission may grant the service authority and competitive classification requested without a hearing. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

**IT IS THEREFORE ORDERED:**

1. That Southwestern Bell Telephone Company is granted intervention in accordance with 4 CSR 240-2.075(4).

2. That the parties shall file a proposed procedural schedule no later than 3:00 PM on November 8, 1999. The procedural schedule shall include dates for the filing of testimony and for a hearing.

3. That this order shall become effective on November 1, 1999.

BY THE COMMISSION



**Dale Hardy Roberts**  
Secretary/Chief Regulatory Law Judge

( S E A L )

Bill Hopkins, Senior Regulatory Law Judge,  
by delegation of authority pursuant to  
4 CSR 240-2.120(1) (November 30, 1995)  
and Section 386.240 RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 21st day of October, 1999.

**R E C E I V E D**

OCT 21 1999

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION