

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
December 30, 1998**

**CASE NO: TO-99-227**

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

Sincerely,



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

**Uncertified Copy:**

**Chris Long**

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**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 December, 1998.

In the Matter of the Application of Southwestern )  
Bell Telephone Company to Provide Notice of )  
Intent to File an Application for Authorization ) Case No. TO-99-227  
to Provide In-region InterLATA Services )  
Originating in Missouri Pursuant to Section 271 )  
of the Telecommunications Act of 1996. )

**ORDER GRANTING INTERVENTIONS  
AND MODIFYING PROCEDURAL SCHEDULE**

Southwestern Bell Telephone Company (SWBT) filed a 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 (Section 271) with the Commission on November 20, 1998. On December 9, 1998, the Commission issued an Order Granting Interventions, Granting Protective Order, and Establishing a Procedural Schedule (hereinafter referred to as the "December 9 order").

**Applications to Intervene**

In the December 9 order, the Commission joined as parties every certificated local exchange carrier and any party with a pending application for local exchange carrier certification as of December 2 and granted intervention to AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., TCG Kansas City, Inc., MCI Telecommunications Corporation, Digital Teleport, Inc., the Mid-Missouri Group of Local

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Exchange Telephone Companies, and Sprint Communications Company L.P. The Commission also ordered that other proper persons should file an application to intervene or to participate without intervention no later than December 21. Applications to intervene were timely filed by the Missouri Cable Telecommunications Association, the State of Missouri, Associated Industries of Missouri, the Telecommunications Resellers Association, e. spire Communications, Inc., Show Me Competition, Inc., and Advanced Communications Group, Inc. In addition, a timely Application for Participation without Intervention was filed by the City of Springfield, Missouri.

The Missouri Cable Telecommunications Association states that it is a trade association organized as a not-for-profit corporation with its principal offices located in Kansas City, Missouri. The Missouri Cable Telecommunications Association states that it has an interest in this proceeding because its 33 member companies provide cable television and some interexchange intrastate telecommunications services within the state of Missouri which may be affected by the Commission's decision. The Missouri Cable Telecommunications Association states that its interests are different from those of the general public.

The Telecommunications Resellers Association (TRA) filed its application to intervene on December 18. TRA stated that it is a national industry association representing more than 650 providers of interexchange, local, wireless, and enhanced telecommunications services and their suppliers. TRA indicated that some of its members are Missouri-based companies. TRA states that its members that have been

authorized to provide interexchange services in Missouri will be in direct competition with SWBT if it is authorized to provide in-region interLATA service. TRA was previously granted participation without intervention in Case No. TO-97-56.

The Commission has reviewed the application to intervene of both the Missouri Cable Telecommunications Association and TRA. The Commission believes that these associations may have interests in this proceeding. However, neither association attached the names of its members to its application in compliance with 4 CSR 240-2.075(3). Therefore the Commission will not grant intervention to the Missouri Cable Telecommunications Association or TRA at this time. The Commission determines that the Missouri Cable Telecommunications Association and TRA shall be given ten days in which to cure their applications to intervene by filing the names of their members, and request that the Commission reconsider their applications.

The State of Missouri, by its Attorney General, filed an Application to Intervene on December 17. The State of Missouri states that it has an interest in the Commission's decision in this case because the telephone rates which its agencies and officials pay are affected by competition in the long distance market. The State of Missouri indicates that its interests are different from those of the general public.

Associated Industries of Missouri (AIM) states that it is an unincorporated association with its principal place of business located in Jefferson City, Missouri. AIM states that its membership includes approximately 1,500 companies and requests a waiver of the requirement

of 4 CSR 240-2.075(3) for purposes of this application. In its application, AIM states that its member companies are local exchange customers of SWBT in Missouri and are potential customers of SWBT or its affiliate. AIM states that its members have direct pecuniary interests which are different from those of the general public.

On December 21 Show Me Competition, Inc.<sup>1</sup> (Show Me) filed an application to intervene stating that it was a not-for-profit corporation whose members include consumer groups, competitive basic local and interexchange telecommunications companies, and telecommunication industry associations. Show Me states that the Commission's decision may affect the interests of its members as consumers of telecommunications services or as competitors of SWBT or its affiliates. Show Me states that its interests in this proceeding are different than those of the general public and its expertise will aid the Commission in making a decision in this matter.

On December 29 SWBT filed a response to Show Me's application. SWBT requests that the Commission deny Show Me's application because the applicant did not demonstrate that its intervention would serve the public interest. SWBT argues that "Show Me is merely a front group for entities which are otherwise participating in this docket." SWBT states that it would not be in the public interest to allow some parties to have duplicate participation. SWBT argues that all of Show Me's members, with

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<sup>1</sup> Show Me Competition, Inc.'s members are: Citizen Action, COMPTel-MO, Telecommunication Resellers Assn., Missouri Telecommunications Coalition, Missouri Cable Telecommunications Association, City Utilities of Springfield, and McLeodUSA.

the exception of Citizen Action, have either already been made parties or have requested to participate or to intervene.

An application to intervene was also filed on December 21 by e. spire Communications, Inc. (e. spire). e. spire is the parent company of two subsidiaries operating in Missouri, American Communication Services of Kansas City, Inc. and ACSI Local Switched Services, Inc. American Communications Services of Kansas City, Inc. has been granted a certificate of authority to provide basic local telecommunications services. ACSI Local Switched Services, Inc., has been granted a certificate of authority to provide intrastate interexchange telecommunications services in the state of Missouri limited to dedicated, nonswitched local exchange private line services. According to its application e. spire has an interest in this proceeding because it will be a direct competitor of SWBT if its application for interLATA service is granted. American Communications Services of Kansas City, Inc. was joined as a party without the need for intervention in the December 9 order.

A motion to intervene was filed on December 21 by Advanced Communications Group, Inc. (ACG). ACG was previously joined as a party without the need for intervention in the December 9 order and, therefore, ACG's motion is moot.

On December 21 the City of Springfield, Missouri, (City) requested to participate without intervention. The City is a constitutional charter city and has also been granted authority by the Commission to provide interexchange and local exchange telecommunications service

in Missouri by Report and Order issued July 11, 1997, in Case No. TA-97-313. The Commission's December 9 order intended to join as a party "all certificated local exchange carriers"; however, the City was inadvertently omitted from the list of certificated carriers. The Commission determines that the City should have been included in its original order and therefore will be made a party.

The Commission has reviewed the applications to intervene and finds that the application of e. spire, AIM, and the State of Missouri are in substantial compliance with Commission rules regarding intervention and that the applicants have an interest in this matter which is different from that of the general public. The Commission concludes that the requests for intervention of e. spire, AIM, and the State of Missouri should be granted and that AIM's request for a waiver of 4 CSR 240-2.075(3) should also be granted.

The Commission reviewed the application to intervene of Show Me and finds that it is not in substantial compliance with 4 CSR 240-2.075(4) because it does not clearly define what interest Show Me has that is different than the interest of the general public or from that of entities which have already been made parties to the case. The Commission determines that it is not in the public interest for an entity to have duplicate representation in this case as both a named party and as a member of an association. However, in some instances it may be necessary to allow an association to participate so that members of the association which have an interest in the case and which are not represented individually may participate.



Show Me states that it is a not-for-profit corporation made up of five associations and two certificated telecommunications carriers. Both McLeodUSA and the City of Springfield are parties to this case<sup>2</sup>. The associations are not further identified and therefore, so far as the Commission can determine from the application, there may be no entity which has an interest that is not already represented in this matter. Show Me may cure its application to intervene by clarifying the identity of its members and stating which of those entities have an interest in this matter and are not already represented. The Commission determines that Show Me may have ten days in which to cure its application to intervene and to request that the Commission reconsider Show Me's application.

### **Motions to Modify the Procedural Schedule**

The December 9 order established the procedural schedule as follows:

January 7, 1999	- Rebuttal Testimony due 3:00 p.m.
January 15, 1999	- Surrebuttal Testimony (all parties) 3:00 p.m.
January 19-20, 1999	- Prehearing Conference 10:00 a.m.
January 25, 1999	- Hearing Memorandum due 3:00 p.m.

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<sup>2</sup> McLeodUSA was made a party in the December 9 order and the City of Springfield is being made a party by this order.

February 1-5 and 8-11, 1999	- Evidentiary Hearing 9:00 a.m. (First Day) (Expedited Transcripts)
February 26, 1999	- Initial Briefs due 3:00 p.m.
March 9, 1999	- Reply Briefs Due 3:00 p.m.

On December 15, the Office of the Public Counsel (OPC) filed a motion to modify the procedural schedule. OPC indicated in its motion that the Commission should not attempt to rush this case. OPC specifically stated that the time for rebuttal testimony to be filed was burdensome on the parties, especially the latest intervenors, due to the relatively short number of business days during the end of December and first of January. OPC suggests an alternative procedural schedule with Rebuttal Testimony to be filed on March 2 and a hearing to be held sometime in May. Both Digital Teleport, Inc. and the Missouri Cable Telecommunications Association<sup>3</sup> filed motions to adopt OPC's procedural schedule.

AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., TCG Kansas City, Inc. (collectively referred to as "AT&T"), Sprint Communications Company, L.P. (Sprint), and MCI Telecommunications Corporation (MCI) jointly filed a Motion to Modify Procedural Schedule on December 23. In their motion, AT&T, Sprint, and MCI state that they also believe the parties need more time to file their rebuttal testimony.

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<sup>3</sup> The Missouri Cable Telecommunications Association has not yet been made a party to this case.

AT&T, Sprint, and MCI also proposed an alternative procedural schedule which eliminated the filing of surrebuttal testimony.

The Staff of the Missouri Public Service Commission (Staff) filed a response on December 24 to OPC's motion to modify. Staff suggests an alternative method of proceeding which would mimic a process which is currently being used in a similar proceeding in the state of Texas. Staff states that in Texas, the parties, in a collaborative process, are "establishing performance standards for the checklist items before moving forward with developing a full evidentiary record regarding whether SWBT actually meets each of the points required for authorization to provide In-Region InterLATA telecommunications service." Staff also argues that in the alternative, the Commission should consider an alternative hearing format such as witness panels.

SWBT filed responses to each of the motions regarding the modification of the procedural schedule. SWBT basically argues that the Commission should not alter its previously set procedural schedule. SWBT argues that OPC and AT&T make the same assertions in their motions to modify as they did in their response and motions which were considered by the Commission before setting the original schedule. SWBT states that there has been no change of circumstances which would justify altering the procedural schedule. SWBT objects to AT&T, Sprint, and MCI's proposal to eliminate surrebuttal testimony. SWBT also objects to Staff's suggested new process, arguing that it would not assist the Commission but would only make the procedure more lengthy. SWBT states that the collaborative process used in the state of Texas was only used

there once that state's Public Utilities Commission had identified deficiencies in SWBT's application.

The Commission has reviewed all the motions, responses, and replies filed by each of the parties. It is reasonable to reconsider its previous procedural schedule in light of the objections and the numerous additional intervening parties, and the Commission will allow additional time for the parties to file rebuttal testimony. Therefore the Commission will modify its previously established procedural schedule as set out below. The Commission has also determined that simultaneous briefing would be appropriate given the fact that the parties will have had an opportunity to present direct, rebuttal, surrebuttal, cross-examination, and redirect. The parties should come to the prehearing conference prepared to discuss, or present, each of their proposals for a hearing format to the Regulatory Law Judge. The parties should be prepared to estimate the time and scheduling of each witness so that the Commission can determine the most appropriate method for structuring the hearing.

**IT IS THEREFORE ORDERED:**

1. That the applications to intervene of e. spire Communications, Inc., the State of Missouri, and Associated Industries of Missouri are granted.
2. That the application to participate without intervention by the City of Springfield, Missouri, is granted.
3. That the Associated Industries of Missouri is granted a waiver of 4 CSR 240-2.075(3) for the purposes of this case.

4. That the applications to intervene of the Missouri Cable Telecommunications Association, the Telecommunications Resellers Association, and Show Me Competition, Inc., are denied for noncompliance with 4 CSR 240-2.075.

5. That the Missouri Cable Telecommunications Association and the Telecommunications Resellers Association shall have until January 12, 1999, to cure their applications to intervene and request that the Commission reconsider their interventions by filing a list of the associations' members in compliance with 4 CSR 240-2.075(3).

6. That Show Me Competition, Inc., shall have until January 12, 1999, to cure the deficiency of its application to intervene and request that the Commission reconsider its intervention by clarifying the identity of its members and stating which of those entities have an interest in this matter which is not already represented.

7. That the procedural schedule is modified as follows:

January 25, 1999	- Rebuttal Testimony due 3:00 p.m.
February 4, 1999	- Surrebuttal Testimony (all parties) 3:00 p.m.
February 8-9, 1999	- Prehearing Conference 10:00 a.m.
February 18, 1999	- Hearing Memorandum due 3:00 p.m.
March 1-5 and March 8-11, 1999 (if necessary)	- Evidentiary Hearing 9:00 a.m. (First Day) (Expedited Transcripts)
March 24, 1999	- Simultaneous Briefs

8. That anyone wishing to attend the prehearing conference or the hearing who has special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the prehearing or hearing at one of the following numbers: Consumer Services Hotline — 1-800-392-4211 or TDD Hotline — 1-800-829-7541.

9. That this order shall become effective on January 12, 1999.

**BY THE COMMISSION**

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

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

( S E A L )

Lumpe, Ch., Drainer, Murray  
and Schemenauer, CC., concur.  
Crumpton, C., absent.

Dippell, Senior Regulatory Law Judge

ALJ/Sec'y: Dipnell / Pope

12-30 10-99-227  
Date Circulated CASE NO.

SL p10  
Lumpe, Chair

clw  
Crumpton, Commissioner

CM 12-10-98 p10  
Murray, Commissioner

DS  
Schemenauer, Commissioner

MO 7, 10, 11, 12  
Drainer, Vice-Chair

12-30  
Agenda Date

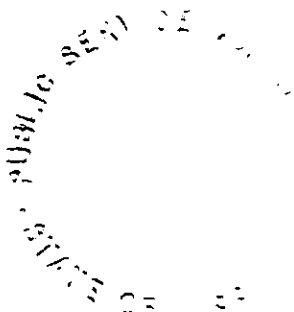
Action taken: 4-0 A A

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 December, 1998.**



Dale Hardy Roberts

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