

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
February 10, 1999**

CASE NO: TO-99-227

General Counsel

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Office of the Public Counsel

P.O. Box 7800
Jefferson City, MO 65102

Paul G. Lane/Leo J. Bub

Anthony K. Conroy/Katherine C. Swaller
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

Paul S. DeFord

Lathrop & Gage
2345 Grand Boulevard, Suite 2500
Kansas City, MO 64108

Richard S. Brownlee, III/Patricia D. Perkins

Hendren and Andrae, L.L.C.
221 Bolivard Street, P.O. Box 1069
Jefferson City, MO 65102

Carl J. Lumley/Leland B. Curtis

Curtis, Oetting, Heinz, Garrett & Soule
130 s. Bemiston, Suite 200
Clayton, MO 63105

Stephen F. Morris

MCI Telecommunications Corporation
701 Brazos, Suite 600
Austin, TX 78701

Kenneth A. Schiffman

Sprint Communications Company L.P.
8140 Ward Parkway, 5E
Kansas City, MO 64114

James M. Fischer

James M. Fischer P.C.
101 West McCarty Street, Suite 215
Jefferson City, MO 65101

Mary Ann Young

William D. Steinmeier, P.C.
2031 Tower Drive
Jefferson City, MO 65110

Karl Zobrist/Christine Egbarts

Blackwell Sanders Peper Martin LLP
2300 Main Street, Suite 1100
Kansas City, MO 64108

Charles Brent Stewart

Stewart & Keevil, L.L.C.
1001 Cherry Street, Suite 302
Columbia, MO 65201

Mark W. Comley

Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
Jefferson City, MO 65102

Michael Ferry

Gateway Legal Services
4232 Forest Park Ave., Suite 1800
St. Louis, MO 63108

Jeremiah W. Nixon/Mark E. Long

Ronald Molteni

Attorney General-State of Missouri
221 West High Street, PO Box 899
Jefferson City, MO 65102

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

Associated Industries of Missouri
411 Jefferson Street, PO Box 1709
Jefferson City, MO 65101

Gary L. Mann

Advanced Communications Group, Inc.
390 South Woods Mill Road, Suite 150
Chesterfield, MO 63017

Diane Miller

Show Me Competition
112 East High Street
Jefferson City, MO 65101

Andrew O. Isar

Telecommunications Resellers Association
4312 92nd Avenue, NW
Gig Harbor, WA 98335

Andy Dalton

City Utilities of Springfield
P.O. Box 551
Springfield, MO 65801

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 10th
day of February, 1999.

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, GRANTING PARTICIPATION,
REQUESTING BRIEFING OF LEGAL ISSUES, NOTICE OF EX PARTE CONTACTS, AND
NOTICE OF TIME TO RESPOND

On December 30, 1998, the Commission issued an order which denied the request to intervene of the Missouri Cable Telecommunications Association, the Telecommunications Resellers Association, and Show Me Competition, Inc. for noncompliance with 4 CSR 240-2.075. The order gave each of those parties an opportunity to cure their applications for intervention and request reconsideration by January 12, 1999.

The Missouri Cable Telecommunications Association filed an Amended Application to Intervene on January 5, 1999. A list of the association's members was attached to the amended application in compliance with the Commission's order. The Commission has reviewed the amended application to intervene of the Missouri Cable Telecommunications Association and finds that it is in substantial compliance with 4 CSR 240-2.070. The Commission further finds that the Missouri Cable Telecommunications Association has an interest which is different from

that of the general public. The Commission concludes that the request for intervention should be granted.

The Telecommunications Resellers Association (TRA) filed a Request for Reconsideration stating that its interest in this proceeding "is limited to monitoring the proceedings and filing a post-hearing brief, which more appropriately calls for status of participation without intervention." Therefore TRA did not file a list of its members. On January 19, 1999, Southwestern Bell Telephone Company (SWBT) filed a response to TRA's application. SWBT stated in its response that it does not object to TRA's participation if that participation is restricted. The Commission finds that TRA's request to participate without intervention is reasonable and should be granted on the limited basis as set out by TRA.

On January 12, 1999, Show Me Competition, Inc. (Show Me), filed a motion for reconsideration of its application to intervene. In the motion, Show Me listed two¹ of its members which have interests that are not already represented in this proceeding. Show Me stated that one of those members is Missouri Citizen Action (MCA). Show Me stated that MCA "works to empower middle and lower income Missouri citizens and families on a range of economic and civic justice issues."

¹ Show Me listed three members in its motion including the American Association of Retired Persons (AARP) which had not previously been included in its membership list. However, on January 20, 1999, Show Me filed a correction to its motion stating that the AARP was not a member of its association and therefore, that portion of its motion related to the AARP should not be considered by the Commission.

Show Me also stated that its member, COMPTel-MO, has interests which are not otherwise represented. COMPTel-MO is a group of interexchange telecommunications companies who provide interexchange services to customers in the State of Missouri. Most of COMPTel-MO's members are otherwise represented in this proceeding; however, two of its members, CommuniGroup of Kansas City, Inc., and Valu-Line of St. Joseph, Inc., are not. Those two members are certificated interexchange carriers who will be in direct competition with SWBT if it is granted in-region interLATA telecommunications service authority.

SWBT filed objections to the motion for reconsideration of Show Me. SWBT objected to the application for intervention on the basis that some of its members are already otherwise represented in this matter. SWBT also objected to the application because Show Me did not explain the change of name of its member, Missouri Citizen Action, which was previously listed as "Citizen Action."²

The Commission has reviewed the motion to reconsider filed by Show Me, the correction to that motion, and the objections of SWBT and finds that Show Me's application to intervene is in substantial compliance with 4 CSR 240-2.070. The Commission further finds that at least some of Show Me's members have an interest which is different from that of the general public. The Commission concludes that the request for intervention should be granted.

² SWBT also included an objection regarding the inclusion of AARP as a member, which Show Me's correction to its application to intervene has made moot.

On January 27, 1999, the Missouri Alliance of Area Agencies on Aging, Missouri Association for the Deaf, Missouri Council of the Blind, National Silver Haired Congress, National Council of Silver Haired Legislatures, Paraquad, and St. Louis Gateway SeniorNet filed a joint motion to participate without intervention. The motion states that each of these not-for-profit organizations represents either senior consumers or consumers with disabilities. The organizations state that their interests are distinct and different from that of the general public. No objections to the motion to participate were filed.

Although the time for intervention has passed, the Commission determines that the request to participate without intervention is reasonable and should be granted on a limited basis.

In addition, the Commission concludes that each of the parties being granted late intervention or participation without intervention shall be required to adopt the procedural schedule as set out in the Commission's order issued December 30, 1998. Show Me filed rebuttal testimony in compliance with the Commission's order on January 25, 1999, even though it had not yet been granted intervenor status and that testimony is accepted as part of the record as if Show Me had been granted party status on the date it was filed.

On January 25, 1999, AT&T Communications of the Southwest, Inc. (AT&T) filed a letter addressed to Secretary/Chief Regulatory Law Judge Dale Hardy Roberts. The letter indicates that carbon copies were served on the Office of the Public Counsel and the General Counsel of the Public Service Commission. However, since to the Commission's knowledge, not

all parties were served with this letter, the Commission considers this to be an ex parte contact and is providing notice of that contact by this order. The letter is attached to this order as Attachment A.

The subject of AT&T's letter is the recent United States Supreme Court decision in AT&T Corp. et al. v. Iowa Utilities Board et al., No. 97-826 (January 25, 1999), which may have some effect on the procedural schedule as set out by this Commission on December 30, 1998. On February 8, 1999, AT&T filed a Motion to Require Briefing and Allow for Supplemental Testimony Regarding AT&T Corp. v. Iowa Utilities Board. AT&T requested in its motion that the Commission require SWBT "to file testimony stating how it has or will modify its positions regarding the terms and conditions on which it offers Missouri competitors access to unbundled network elements and other items, as a result of the Supreme Court decision." In addition AT&T requested that the opposing parties be allowed to file supplemental testimony in response and that all the parties be allowed to brief the impact of the Supreme Court decision on the matter before the Commission. AT&T also filed a motion requesting that the response time to its motion be shortened.

Because of the complexities of this case and the necessity to proceed expeditiously, the Commission, on its own motion, had determined that legal memoranda filed by the parties indicating what the effect, if any, the AT&T Corp. v. Iowa Utilities Board decision will have on the procedural schedule of this case should be ordered. Because of the expedited procedural schedule the Commission determines that the period for filing a response to AT&T's motion should be shortened. The

Commission will also order that any motions to alter the procedural schedule of this case as a result of the AT&T Corp. v. Iowa Utilities Board decision shall be filed expeditiously.

The Commission also received a letter on January 19, 1999, from the AARP Missouri State Legislative Committee, Mary Lou O'Connell, Chair, which was addressed to Judge Roberts. The subject of this letter was the lack of authorization for Show Me to use AARP's name as a member of its organization. The letter indicates that a carbon copy was served on the Office of the Public Counsel, but does not appear to have been served on all the parties to this case. The Commission considers this an ex parte contact and is hereby notifying each of the parties of that contact by attaching a copy of the letter to this order as Attachment B.

On January 25, 1999, MCI Telecommunications Corporation, MCImetro Access Transmission Services, Inc., MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc., and WorldCom Technologies, Inc. filed a motion to accept its late-filed rebuttal testimony. The rebuttal testimony was received by the Commission on January 25, 1999, but after the 3:00 p.m. filing deadline. No objections to the motion were filed. The Commission determines that the motion to accept late-filed rebuttal testimony has not prejudiced any party and therefore the motion should be granted.

IT IS THEREFORE ORDERED:

1. That the amended application to intervene of the Missouri Cable Telecommunications Association is granted.

2. That the request to participate without intervention of the Telecommunications Resellers Association is granted.

3. That the Telecommunications Resellers Association's participation shall be limited to monitoring the proceedings and filing post-hearing briefs.

4. That the motion to participate without intervention of the of Missouri Alliance of Area Agencies on Aging, Missouri Association for the Deaf, Missouri Council of the Blind, National Silver Haired Congress, National Council of Silver Haired Legislatures, Paraquad, and St. Louis Gateway SeniorNet is granted.

5. That Missouri Alliance of Area Agencies on Aging, Missouri Association for the Deaf, Missouri Council of the Blind, National Silver Haired Congress, National Council of Silver Haired Legislatures, Paraquad, and St. Louis Gateway SeniorNet's participation shall be limited to monitoring the proceedings and filing post-hearing briefs.

6. That the application to intervene of Show Me Competition, Inc. is granted.

7. That the parties are requested to file legal memorandums on or before February 17, 1999, explaining the effect of the United States Supreme Court decision in AT&T Corp. et al. v. Iowa Utilities Board et al., No. 97-826 (January 25, 1999).

8. That any motions to alter the procedural schedule as a result of the United States Supreme Court decision in AT&T Corp. et al. v. Iowa Utilities Board et al., No. 97-826 (January 25, 1999) shall be filed no later than February 17, 1999.

9. That responses to AT&T Communications of the Southwest, Inc.'s Motion to Require Briefing and Allow for Supplemental Testimony Regarding *AT&T Corp. v. Iowa Utilities Board* shall be filed no later than February 17, 1999.

10. That MCI Telecommunications Corporation, MCImetro Access Transmission Services, Inc., MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc., and WorldCom Technologies, Inc.'s motion to accept late-filed rebuttal testimony is granted.

11. That this order shall become effective on February 17, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dippell, Senior Regulatory Law Judge



January 25, 1999

FILED

JAN 25 1999

Missouri Public
Service Commission

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

Re: Case Number TO-99-227

Dear Judge Roberts:

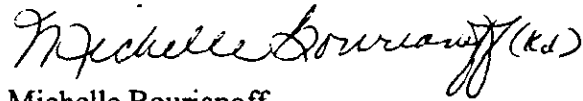
In accordance with the procedural schedule, AT&T is today filing its rebuttal testimony in this docket. As it makes this filing, AT&T wishes to bring to the attention of the Commission that the United States Supreme Court has this morning released its decision in a case that will impact significantly the issues presented by Southwestern Bell's application for 271 relief - *AT&T Corp. v. Iowa Utilities Board*, No. 97-826 (January 25, 1999). While time has not permitted detailed review of the decision, it is clear that the Supreme Court has reinstated several FCC rules that had been vacated by the 8th Circuit - including, for example, the rule prohibiting incumbent local exchange carriers from separating combinations of unbundled network elements ordered by competitive local exchange carriers, and the rule permitting CLECs to "pick-and-choose" provisions from other approved interconnection agreements as they negotiate their own interconnection agreements with the incumbent.

Today's Supreme Court ruling significantly impacts and clarifies the nature of the legal obligations that SWBT must satisfy as a pre-requisite to long-distance entry under section 271 of the Act. Today's ruling changes some of the premises under which SWBT prepared its direct testimony, and under which AT&T (and presumably others) prepared the rebuttal testimony that is due today. In order to apply the law of the land, as announced today, in this docket, all parties must have the opportunity to present testimony that takes account of today's ruling. However, the timing of today's announcement has made it impossible for AT&T to incorporate any consideration of today's ruling in the rebuttal testimony being filed today. The procedural schedule affords parties in AT&T's position no further opportunity to submit testimony (anticipating that SWBT will not file testimony in rebuttal to its own direct case).

AT&T will present promptly, by separate motion, a formal request for such actions as may be appropriate to apply today's Supreme Court ruling to SWBT's pending

application. Meanwhile, AT&T submits this letter to make a record of the fact that the timing of today's Supreme Court pronouncement has foreclosed AT&T from taking account of it in the rebuttal testimony being filed today and to request more generally that this Commission proceed in a manner that affords all parties a fair opportunity to present evidence in this docket that is based on the authoritative interpretation of the Telecommunications Act of 1996 pronounced by the Supreme Court today.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michelle Bourianoff (k.d.)".

Michelle Bourianoff
AT&T Attorney

cc: Office of Public Counsel
General Counsel



MISSOURI STATE LEGISLATIVE COMMITTEE

CHAIR

Mrs. Mary "Lou" O'Connell
14 Quailways Drive
Creve Coeur, MO 63141
(314) 432-4018

VICE CHAIR

Mr. Robert "Bob" Bradley
237 NC Foxtail Circle
Lees Summit, MO 64064
(816) 478-1396

SECRETARY

Mr. Glenn Thomas
2467 S Meadowlark Lane
Springfield, MO 65807
(417) 882-5178

CCTF COORDINATOR

Dr. William "Bill" Ray
2206 Ridgfield Road
Columbia, MO 65203
(573) 445-2820

FILED

JAN 19 1999

Missouri Public
Service Commission

January 15, 1999

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street
Truman State Office Building, Room 530
Jefferson City, MO 65101

Re: Case No. TO-99-227

Dear Judge Roberts:

I am the Chairman of AARP Missouri State Legislative Committee and have just learned Show Me Competition, Inc. named AARP as a partner in their intervention against Southwestern Bell getting into the long distance business.

This letter is to inform you Show Me Competition, Inc. did not have authorization to include AARP in this filing.

The State Legislative Committee follows many issues that concern consumers. The Committee has not taken this issue under consideration; therefore, at this time we are neutral.

Thank you for this opportunity allowing us to clarify our position.

Sincerely,

Mary Lou O'Connell, Chair
State Legislative Committee

CC: Office of Public Counsel



1. ALJ/Sec'y: Dyspelt / Pope

2-2 10-99-227
Date Circulated CASE NO.

SL ps
Lumpkin, Chair

[Signature]
Crumpton, Commissioner

CM
Murray, Commissioner

SL
Schemenauer, Commissioner

[Signature]
Drainer, Vice-Chair

2-9 cont'd to 2-10
Agenda Date

Action taken: 5-0AA

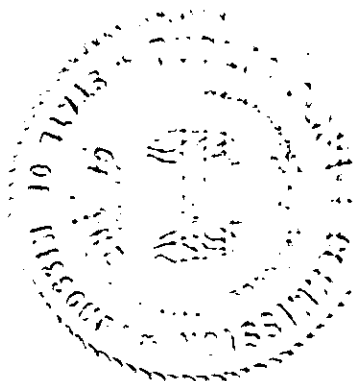
Must Vote Not Later Than _____

**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 10TH day of FEBRUARY, 1999.



Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge