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 Southwestern Bell

September 20, 1999

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

FILED²
SEP 20 1999
Missouri Public
Service Commission

Re: Case Nos. TO-99-615 and TO-2000-16

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Response To OPC's Motion To Compel.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Leo J. Bub /tm

Leo J. Bub

Enclosure

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

FILED²

SEP 20 1999

**Missouri Public
Service Commission**

In the Matter of the Request of AT&T)
Communications of the Southwest, Inc., to)
Terminate Carrier of Last Resort Obligation.)

Case No. TO-99-615

In the Matter of the Motion to Establish a)
Docket Investigating the IntraLATA Toll Service)
Provisioning Practices of Missouri Interexchange)
Carriers, Public Utility or Common Carrier Duties)
of Interexchange Carriers, Motion to Show Cause,)
Request for Emergency Hearing, and Alternative)
Petition for Suspension and Modification.)

Case No. TO-2000-16

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
RESPONSE TO OPC'S MOTION TO COMPEL**

Southwestern Bell Telephone Company respectfully submits this Response in opposition to the Office of the Public Counsel's (OPC) Motion to Compel Answers to Data Requests. For its Response, Southwestern Bell states:

1. OPC served eight Data Requests on Southwestern Bell by fax on July 16, 1999. For the most part, these Data Requests sought information about interexchange carriers (IXCs) providing intraLATA toll services to residence and business customers in Southwestern Bell exchanges, whether any IXCs might have requested that they not be identified as providing intraLATA toll services in Southwestern Bell exchanges, and the percentage of Southwestern Bell customers who have AT&T, MCI or Sprint as their interLATA provider (OPC DR Nos. 1-6). In addition, OPC sought the number of customer complaints received by Southwestern Bell concerning intraLATA presubscription in its exchanges along with copies of any such complaints or writings pertaining to such complaints (OPC DR No. 7); and a description of the training, instructions and information Southwestern Bell may have provided to its customer service representatives concerning the intraLATA toll presubscription process, along with copies of any such materials (OPC DR No. 8).

2. Southwestern Bell responded to OPC's Data Requests on July 22, 1999 indicating that it did not have any problem with providing answers to DR Nos. 1-6 after being made a party to the cases in which the DRs were propounded (Case Nos. TO-99-615 and TO-2000-16). Southwestern Bell stated that it had filed an application to intervene in both cases and would begin work to gather

the requested materials so that there would be no delay in providing answers to OPC once Southwestern Bell is granted intervention in those cases. (See, Southwestern Bell's July 22, 1999 correspondence to OPC, attached as Exhibit B to OPC's Motion to Compel). Southwestern Bell is prepared to provide the information sought in DR Nos. 1-6 upon being granted intervention.

3. Southwestern Bell, however, objected to OPC DR Nos. 7 and 8 because the information sought has no relevance to issues being considered in Case Nos. TO-99-615 and TO-2000-16, or which might lead to the discovery of information that would be relevant in those cases.

The Commission established Case No. TO-99-615 to consider a request filed by AT&T to terminate its carrier of last resort obligation to offer basic interexchange interLATA service. Clearly, information pertaining to any complaints Southwestern Bell might have received concerning intraLATA presubscription and any training materials it may have provided to its service reps concerning the intraLATA presubscription process has no relation to AT&T's request to be relieved of its interLATA carrier of last resort obligation.

The Commission established Case No. TO-2000-16 at the request of the Mid-Missouri Group (MMG) of local exchange companies and the Small Telephone Company Group (STCG) following AT&T's refusal to accept requests from customers in MMG and STCG exchanges for 1+ intraLATA toll service. To Southwestern Bell's knowledge, AT&T has not refused to provide 1+ intraLATA toll services to customers in Southwestern Bell exchanges, and neither MMG nor STCG made such a claim. Rather, the focus of the investigation MMG and STCG sought pertained to IXC toll service provisioning practices in Secondary Carrier (SC) exchanges, not those served by Southwestern Bell. The Commission further narrowed the relevant inquiry in its August 10, 1999 Order Directing Notice, Directing Reports, and Requiring Record Collection stating:

Although the Commission does not believe that the allegations raised by MMG require an investigation into the business office practices of all IXCs, the Commission is concerned with AT&T's refusal to offer 1+ intraLATA service to customers who request it. (Order, p. 5).

Accordingly it directed AT&T to file a verified report stating, by exchange, the number of requests for 1+ intraLATA service it has received, the number it has accepted and the number it has declined. (Ibid.). The Commission also ordered Staff to investigate AT&T's refusal to serve customers in SC

exchanges and to address several issues pertaining to AT&T's obligation to serve. (Order, p. 6). The Commission has not ordered any investigation into AT&T's provisioning practices in Southwestern Bell exchanges (and to the extent AT&T may have refused customers in those exchanges -- which Southwestern Bell believes has not occurred -- that information will in any event be captured in what AT&T has been required to provide). Given the scope of inquiry defined by the Commission, information OPC seeks pertaining to complaints Southwestern Bell might have received concerning the intraLATA presubscription process in its exchanges and Southwestern Bell's service rep training materials about intraLATA presubscription have no relevance here.

4. Public Counsel, in its Motion to Compel, also took issue with Southwestern Bell's reluctance to provide DR answers until it is made a party to these cases. Citing Section 386.450 RSMo (1994), OPC claims that Missouri statutes authorize OPC to issue Data Requests and that it has authority to investigate utilities and to review any utility records whether or not a case is open. (See, OPC Motion to Compel, pp. 1-2). Section 386.450, however, does not give OPC free reign to conduct unlimited discovery against Missouri utilities as OPC seems to contend. Rather, this section establishes the procedure by which OPC may obtain orders from the Commission requiring a utility to produce records. To obtain such an order, the statute requires OPC to submit a request to the Commission and show good cause:

At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place within or without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the public counsel when the order is issued at his request or by the commission or under its direction. Section 386.450 RSMo (1994).

Here, OPC has done neither. Instead, OPC has followed the standard discovery process applicable to all parties before the Commission. It has not attempted to follow Section 386.450 RSMo (1994) nor, as demonstrated above, has it shown good cause for such an order to issue.

In summary, Southwestern Bell has no objection to providing nearly all of the information OPC requests once Southwestern Bell has been made a party to these proceedings (and indeed has already gathered much of the information to which it has voiced no substantive objection for production to OPC). But until being made a party subject to the Commission's normal discovery rules, OPC may not invoke the Commission's standard discovery process. Southwestern Bell believes that this procedural aspect of the current discovery dispute will soon be mooted by the Commission's action on Southwestern Bell's pending applications to intervene in these cases (which were filed pursuant to Commission notices inviting such applications). Accordingly, Southwestern Bell would provide answers to OPC's DRs as outlined above. With regard to DR Nos. 7 and 8, however, the information sought is not relevant and SWBT should not be compelled to provide it.

WHEREFORE, Southwestern Bell respectfully requests the Commission to deny OPC's Motion to Compel.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on September 20, 1999.

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