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February 18, 2000

 Southwestern Bell

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

FEB 18 2000

Missouri Public
Service Commission

Re: Case No. TO-2000-322

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Objection to the Missouri Department of Economic Development's Request to Participate Without Intervention.

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

Very truly yours,

Paul G. Lane / TM

Paul G. Lane

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

FEB 18 2000

Missouri Public
Service Commission

In the Matter of the Petition of DIECA)
Communications, Inc. d/b/a Covad)
Communications Company for Arbitration)
of Interconnection Rates, Terms, Conditions)
and Related Arrangements with Southwestern)
Bell Telephone Company.)

Case No. TO-2000-322

SOUTHWESTERN BELL TELEPHONE COMPANY'S
OBJECTION TO THE MISSOURI DEPARTMENT OF ECONOMIC
DEVELOPMENT'S REQUEST TO PARTICIPATE WITHOUT INTERVENTION

Comes now Southwestern Bell Telephone Company and, for its Objection to the Missouri Department of Economic Development's Request to Participate Without Intervention, states as follows:

1. On or about November 8, 1999, Dieca Communications, Inc., d/b/a Covad Communications Company ("Covad"), filed its Petition for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Southwestern Bell Telephone Company ("SWBT").

2. On November 29, 1999, the Commission issued its Order Regarding Arbitration, requiring SWBT to file its Answer to the Petition. SWBT complied with this Order and filed its Answer to Petition on December 6, 1999.

3. On December 29, 1999, the Commission issued its Order Adopting Procedural Schedule, setting the Evidentiary Hearing in this matter for February 8th-9th, and 15th, 2000. On February 3, 2000, the Commission issued its Order Granting Motion to Modifying Procedural Schedule, thereby changing the hearing dates to February 15th-16th, 2000.

4. On February 10, 2000, the Missouri Department of Economic Development ("DED") filed its Request to Participate Without Intervention. SWBT received this Request on the morning of February 15th, at the commencement of the Evidentiary Hearing in this proceeding.

5. SWBT objects to this Request for five reasons.

A. First, the DED is not a "participant without intervention" as that term is defined in 4 CSR 240-2.010. Specifically, a "participant without intervention" is a person, corporation, municipality, political subdivision or public utility". 4 CSR 240-2.010. The DED is not a person, corporation, municipality, political subdivision or public utility. Rather, the DED is an executive agency of the State of Missouri existing pursuant to Section 36(a) of Article IV of the Missouri Constitution and Section 620.010, R.S.Mo. Therefore, it cannot participate in this proceeding without intervention.

B. Second, even if the DED was a "participant without intervention" as that term is defined in 4 CSR 240-2.010, which it is not, it failed to comply with 4 CSR 240-2.075(5). Specifically, the DED failed to make a full statement of the position it intends to take in the proceeding as is required by 4 CSR 240-2.075(5). SWBT cannot rebut or counter any claim or position advanced by the DED since DED has not advised of its position. DED apparently seeks to wait to disclose its position after the filing of its brief. Only a single brief is permitted in this case, and SWBT would have no opportunity to respond to DED.

C. Third, the application to participate without intervention is not timely. While no specific time limit for such requests is set in the Commission rules, it is instructive that applications to intervene must be filed within thirty (30) days after the

Commission issues its order giving notice of the case, unless otherwise ordered by the Commission. 4 CSR 240-2.075(1). In this matter, the Commission issued its Order giving notice of the case on November 29, 1999. No reason or justification for filing for intervention on the eve of the hearing, more than three months after the arbitration petition was filed, has been provided. Participation without intervention should be denied.

D. Fourth, the Telecommunications Act of 1996 contemplated that arbitration will be between the competitive local exchange carrier and the incumbent local exchange carrier, and not any other party. The Commission has previously held that entities not a party to the interconnection agreement cannot participate in the arbitration proceeding. See Order Denying Intervention and Participation Without Intervention, Case No. TO-97-40, page 2 (September 6, 1996). SWBT is not aware of any arbitration proceeding in Missouri in which entities other than the parties, Staff (at the Commission's direction), or Office of Public Counsel (pursuant to express statutory directive) have been permitted to participate. DED has not advanced persuasive rationale to support a different result here.

E. Further, DED is not a proper participant in this proceeding under any circumstances as the Commission itself is a part of the Department of Economic Development. The Commission and the Staff are fully capable of considering any legitimate interest the Department of Economic Development may have.

For all these reasons, SWBT prays the Commission denies the Missouri Department of Economic Development's Request to Participate Without Intervention, and grant any additional and further relief the Commission deems just and proper.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Paul G. Lane /tm

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by Facsimile and by Airborne Express on February 18, 2000.

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