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Case No. TO-98-212

**ORDER DENYING MOTION TO STRIKE**

At the evidentiary hearing held on February 9 to 11, 1998, the Office of the Public Counsel (OPC) offered Group Exhibits 6, 7, 28 and 29, consisting of consumer letters and electronic mail messages (collectively "letters") sent to OPC and the Commission. The Commission received the exhibits at the hearing, and directed OPC to submit a late-filed exhibit summarizing the positions of the consumers whose letters were contained in Group Exhibits 6, 7, 28 and 29. In response, OPC submitted late-filed Exhibit 37 to the Commission on February 27. Exhibit 37 consists of a chart listing the consumers's names, addresses and positions on the issues in the case.

On March 5, 1998 Southwestern Bell Telephone Company (SWBT) filed a motion to strike late-filed Exhibit 37. SWBT alleged that OPC's summary of consumer opinions was inaccurate and misrepresented the views of the consumers. According to SWBT, OPC misstated the preferences and views of the consumers who had written to the Commission in order to make it appear that consumers generally support the geographic split proposed by OPC. SWBT alleged that OPC erred in describing the positions of five specific individuals, and that OPC's summary should not be relied on by the Commission. SWBT stated that the letters from consumers speak for themselves.

OPC filed its response to SWBT's motion on March 10. OPC admitted that it made clerical errors in classifying consumers' positions but denied any deliberate effort to mislead the Commission. In order to correct the clerical errors that it acknowledged, OPC filed a Corrected Exhibit 37 with its pleading that highlighted the corrected areas. OPC disagreed that its summary was misleading with respect to the remaining consumers<sup>1</sup> identified in SWBT's motion, emphasizing that some of the letters in Group Exhibits 6, 7, 28 and 29 were difficult to categorize. OPC agreed with SWBT that the letters themselves are the best evidence and reflection of the consumer's comments and stated that absent a Commission directive, OPC would not have submitted such a summary. Nevertheless, OPC argued that striking the entire Exhibit 37 would be too harsh a remedy for addressing the two clerical errors and that the Commission should admit Exhibit 37 and give it the weight it warrants.

While SWBT's motion was directed to the Exhibit 37 that was submitted to the Commission on February 27, OPC has now withdrawn that exhibit and substituted Corrected Exhibit 37. On March 16, SWBT filed a reply to OPC's response that reiterated its objections to the original Exhibit 37 and stated the same objections with respect to the Corrected Exhibit 37.

The Commission has reviewed the relevant pleadings and exhibits and finds that SWBT's motion should be denied. The Commission requested a summary chart from OPC to assist the Commission in reviewing the positions of the consumers who submitted letters to OPC or the Commission

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<sup>1</sup> The body of OPC's response states that it corrected two clerical errors noted by SWBT and a third error not mentioned in the SWBT motion. However, Corrected Exhibit 37 contains four corrections: three in response to specific errors identified in SWBT's motion and a fourth to correct an error not mentioned in the SWBT motion. Although OPC stated that it disagreed with SWBT's analysis of Mr. Jordan's letter, OPC in fact changed its classification of this letter.

at a glance. To the extent there are any inaccurate statements in the summary, the Commission can refuse to give them any weight in its consideration. The Commission cannot be misled by any such inaccuracies because the Commission also has admitted Group Exhibits 6, 7, 28 and 29, which contain the letters themselves. Corrected Exhibit 37 shall be admitted, and the Commission shall give the contents of Corrected Exhibit 37 its due weight when the Commission makes its findings and conclusions and disposes of the case.

**THEREFORE, IT IS ORDERED:**

1. That Southwestern Bell Telephone Company's motion to strike, filed on March 5, 1998, is denied.
2. That Corrected Exhibit 37, submitted by the Office of the Public Counsel on March 10, 1998, is admitted.
3. That this order shall be effective on March 18, 1998.

**BY THE COMMISSION**



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

( S E A L )

Amy E. Randles, 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 18th day of March, 1998.

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COMMISSION COUNSEL ( )  
PUBLIC SERVICE COMMISSION