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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 26th
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 DENYING MOTIONS TO FILE SUPPLEMENTAL TESTIMONY,
DENYING MOTIONS TO ALTER PROCEDURAL SCHEDULE,
GRANTING AND DENYING MOTIONS TO COMPEL,
GRANTING PARTICIPANTS' MOTION TO MAKE OPENING STATEMENT,
GRANTING LEAVE TO APPEAR,
AND DISMISSING PARTIES

MOTIONS TO FILE SUPPLEMENTAL TESTIMONY AND TO ALTER
PROCEDURAL SCHEDULE

On February 8, 1999, AT&T Communications of the Southwest, Inc.¹
filed a Motion to Require Briefing and Allow for Supplemental Testimony
Regarding AT&T Corp. v. Iowa Utilities Board and to Modify Procedural
Schedule. The motion requested that the Commission require Southwestern
Bell Telephone Company (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 AT&T Corp. v. Iowa Utilities Bd. In addition

¹ The motion was filed on behalf of AT&T Communications of the
Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas city, Inc., which
are collectively referred to as "AT&T".

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 AT&T Corp. v. Iowa Utilities Bd. on the matter before the Commission.

The Office of the Public Counsel (Public Counsel) had also previously requested that the parties be allowed to file supplemental testimony and briefs on the impact of AT&T Corp. v. Iowa Utilities Bd. The Commission on its own motion requested the parties to brief it regarding AT&T Corp. v. Iowa Utilities Bd. The Commission also ordered that responses to AT&T's motion and all requests to alter the procedural schedule as a result of AT&T Corp. v. Iowa Utilities Bd. be filed no later than February 17, 1999.

Legal memoranda were received from SWBT, Public Counsel, the Staff of the Missouri Public Service Commission (Staff), AT&T, MCI Telecommunications Corporation², and Sprint Communications Company L.P (Sprint).

AT&T argues in its legal memorandum that "the Supreme Court's reinstatement of [Federal Communications Commission] rules has confirmed or clarified an incumbent LEC's obligations under the Act, obligations that are incorporated into competitive checklist requirements or the

² The Joint Memorandum Regarding Effect of United States Supreme Court Decision and Joint Motion to Alter Procedural Schedule (hereinafter "Joint Memorandum") was filed on behalf of MCI Telecommunications Corporation, MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc., and WorldCom Technologies, Inc., which are collectively referred to as "MCI".

public interest test that SWBT must meet to obtain Section 271 relief."³ AT&T's second argument is that because the Supreme Court vacated Rule 319 and required the FCC to reconsider which unbundled network elements (UNEs) the incumbents must provide to requesting carriers, there is uncertainty about which UNEs will be available and the terms on which they will be available. Finally, AT&T argues that SWBT's positions in this case and public statements made by it in other jurisdictions would support a modification of the procedural schedule.

MCI generally concurred with AT&T's motion stating that it believed there were three significant implications of AT&T Corp. v. Iowa Utilities Bd. Those implications are: "(1) Availability of combinations of unbundled network elements; (2) Continued availability of individual unbundled network elements; and (3) Ability of carriers to opt-into individual terms of other interconnection agreements under the FCC's 'pick and choose' rule."⁴ Because of these issues, MCI requests that the Commission order SWBT to "confirm that it intends to submit supplemental testimony explaining how it has revised its policies and practices to achieve consistency with the Supreme Court's decision" and to modify the current procedural schedule to allow the parties to submit supplemental

³ Brief of AT&T Regarding Impact of AT&T Corp. v. Iowa Utilities Board, at page 5.

⁴ Joint Memorandum, at pp.1-2.

testimony. In the alternative, MCI requests the Commission to dismiss this case.

Sprint states in its legal memorandum that the "decision and SWBT's policies implemented as a result of the decision have a profound effect on the analysis of whether SWBT meets certain 271 checklist items."⁵ Sprint requested that the procedural schedule be modified to allow for additional testimony, specifically in reference to the provision of interconnection and UNEs.

Staff argued that SWBT has the burden of showing that it has met the requirements of Section 271 of the Telecommunications Act of 1996, and therefore, SWBT should be allowed to proceed on the case it has submitted if SWBT believes its case is sufficient. Staff stated that if the intervening parties believe that SWBT has not met its burden, those arguments should be included in the post-hearing briefs. Staff recommended "that the Commission go forward with the hearings as currently scheduled, issue an Order describing its conclusions relating to SWBT's compliance, and, if necessary order further proceedings to address those requirements that have not been met."⁶

Public Counsel suggested in its filing that the Commission should allow parties to file supplemental testimony to address these issues which may not require continuation of the current procedural schedule but may cause it to be extended beyond the set time frames.

⁵ Sprint Legal Memorandum on the Effect of AT&T Corp. v. Iowa Utilities Board and Motion to Modify Procedural Schedule, at page 5.

⁶ Staff's Legal Memorandum, at page 4.

SWBT filed a response to AT&T's motion and a legal memorandum. SWBT stated in its legal memorandum that "the decision has little impact on SWBT's application for authority to provide long distance services, and should not result in a delay in the current procedural schedule in this case."⁷ SWBT argues that the decision has no current impact on the competitive local exchange company's abilities to obtain particular network elements under existing interconnection or resale agreements. SWBT attached a letter addressed to the FCC dated February 9, 1999, in which it made a commitment to continue to provide UNES in accordance with existing agreements and to continue to negotiate agreements in good faith. SWBT requested that the Commission proceed as scheduled.

The Commission has reviewed the legal memoranda and motions to alter the procedural schedule and agrees with Staff's analysis. The law may never be static. However, SWBT has indicated that it intends to file its application for authorization to provide in-region interLATA telecommunications services in Missouri and the Commission will gather information in order to make a recommendation to the FCC. SWBT will have the burden of convincing the Commission it has met the requirements of the Telecommunications Act of 1996 and any dispute over the ability of SWBT to meet all the necessary legal criteria should be presented in briefs. The Commission will order that the hearing proceed as scheduled, and will not require any additional testimony to be filed.

⁷ Southwestern Bell Telephone Company's Legal memorandum Addressing the effect of the United States Supreme Court's Decision in AT&T Corp. v. Iowa Utilities Board, at page 1.

MOTIONS TO COMPEL

On February 18, 1999, SWBT filed a motion to compel Birch Telecom of Missouri, Inc. (Birch) to respond to subsection (c)(4) of its Data Request No. 1. On February 23, 1999, SWBT filed a motion to compel AT&T to respond to its Data Request Nos. 1-4. Because of the impending hearing, the Commission issued a Notice on February 23, 1999, requiring Birch and AT&T to respond by 10:00 a.m., February 25, 1999.

SWBT states that its Data Request to Birch was served on February 1, 1999, and SWBT received Birch's objection on February 15, 1999, which was beyond the ten days allowed by 4 CSR 240-2.090(2).

At 9:33 a.m., February 25, 1999, the Commission received, via facsimile, Birch's motion for a waiver of 4 CSR 240-2.080(3) which does not allow facsimile filings. Birch's counsel states that Birch was not served with a copy of SWBT's motion to compel and therefore first learned of such motion when it received the Commission's order setting time for response.

The Commission determines that due to the shortened response time the Commission will waive 4 CSR 240-2.080(3) and accept Birch's response for filing by facsimile.

For its response, Birch states that it provided SWBT with a majority of the information requested and believes that it has provided SWBT with all the relevant information which it would get from the interconnection agreements. Birch's counsel states that he recalls the objection being faxed to SWBT on February 11, 1999; however, counsel does not provide any supporting documents for this assertion.

The Commission has reviewed SWBT's motion to compel Birch and the response, and finds that Birch's objection to SWBT's data request is untimely. However, because interconnection agreements are required to be kept on file at the Missouri Public Service Commission, these records should be readily available to SWBT for review. Therefore, the Commission will require Birch to provide the requested interconnection agreements but will not require their immediate production. If SWBT feels it cannot present an adequate case to the Commission without this information, it is free to request postponement of these proceedings.

In its response, AT&T objects to the Data Requests on the basis that they are overly broad, not likely to lead to the discovery of admissible evidence and irrelevant. AT&T states that SWBT has the burden in this case to prove "that it has taken steps to open the market to irreversible competition." AT&T also states that at the very least, the Commission should deny SWBT's request to shorten the time for responding due to the fact that the volume of the requests would make it unreasonable to deliver such documents in the shortened time frame. Furthermore, AT&T objects to the Data Requests because they would require AT&T to release all of its business plans for Missouri.

The Commission has reviewed the motion to compel AT&T to respond and AT&T's response and determines that the Data Requests Nos. 1-4 are overbroad and therefore AT&T will not be compelled to comply.

MOTION TO MAKE OPENING STATEMENT

On February 10, 1999, the Commission granted the untimely request to participate without intervention of the Missouri Alliance of Area Agencies on Aging, Missouri Association for the Deaf, Missouri Council of the Blind, National Silver Haired Congress, National Silver Haired Legislatures, Paraquad, and St. Louis Gateway SeniorNet (collectively referred to as "Participants"). The order limited Participants to monitoring the proceedings and filing post-hearing briefs.

Participants filed a motion requesting the Commission to allow them to make an opening statement at the hearing in order to set forth their position to the Commission. On February 23, 1999, Public Counsel filed an objection to allowing the statement stating that it believes "the broad umbrella of Public Counsel's representation of the consumer and the public in this proceeding provides for the representation of these consumers."

On February 25, 1999, Participants filed a response to Public Counsel's objections. In their response they state that Public Counsel will not adequately represent their interests because Public Counsel is opposed to SWBT's application, while the Participants support it. Participants state that their opening statement will be limited to no more than five minutes in length.

The Commission has reviewed the motion, objections, and response, and determines that the Participants may make a very brief opening statement limited to no more than five minutes in length.

LEAVE TO APPEAR

On February 23, 1999, Sprint requested leave for its attorney, Rachel C. Lipman, to appear. Ms. Lipman is a member in good standing of the Bar of the state of Kansas. The Commission finds that the request is in compliance with 4 CSR 240-2.040(6)(C) and should be granted.

DISMISSAL OF PARTIES

The Commission made all certificated local exchange carriers and any party with a pending application for local exchange carrier certification as of November 20, 1998, parties to this action without the need for intervention. Many of these parties have not been active and did not participate in the prehearing conference held on February 8-9, 1999. In accordance with Commission rule 4 CSR 240-2.090(5) the parties which were not in attendance at the prehearing conference and which have not been otherwise active in this case will be dismissed.

IT IS THEREFORE ORDERED:

1. That the motions to file supplemental testimony and to alter the procedural schedule are denied.

2. That Birch Telecom of Missouri, Inc. is granted a waiver of 4 CSR 240-2.080(3) for the filing of its response to Southwestern Bell Telephone Company's motion to compel.

3. That Southwestern Bell Telephone Company's motion to compel Birch Telecom of Missouri, Inc. to respond to its Data Request No. 1 is granted. Birch Telecom of Missouri, Inc. shall produce the requested documents no later than March 18, 1999.

4. That Southwestern Bell Telephone Company's motion to compel AT&T Communications of the Southwest, Inc. to respond to its Data Requests Nos. 1-4 is denied.

5. That the motion to make an opening statement limited to no more than five minutes of the Missouri Alliance of Area Agencies on Aging, Missouri Association for the Deaf, Missouri Council of the Blind, National Silver Haired Congress, National Silver Haired Legislatures, Paraquad, and St. Louis Gateway SeniorNet is granted.

6. That the Petition for Leave for Rachel C. Lipman, Esquire, to Appear in the Matter on Behalf of Sprint Communications Company L.P. is granted.

7. That the inactive parties to this case are dismissed, and the remaining parties in this case are as listed below:

ALLTEL Missouri, Inc.
BPS Telephone Company
Cass County Telephone Company
Citizens Telephone Company of Higginsville,
Missouri, Inc.
Craw-Kan Telephone Cooperative, Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Telephone Company
Goodman Telephone Company, Inc.
Granby Telephone Company
Grand River Mutual Telephone Corporation
Green Hills Telephone Corporation
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
KLM Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
Mark Twain Rural Telephone Company
McDonald County Telephone Company
Miller Telephone Company
New Florence Telephone Company

New London Telephone Company
Orchard Farm Telephone Company
Oregon Farmers Mutual Telephone Company
Ozark Telephone Company
Rock Port Telephone Company
Seneca Telephone Company
Steelville Telephone Exchange, Inc.
Stoutland Telephone Company
Alma Telephone Company
Chariton Valley Telephone Corporation
Choctaw Telephone Company
Mid-Missouri Telephone Company
MoKan Dial, Inc.
Modern Telecommunications Co.
Northeast Missouri Rural Telephone Company
Peace Valley Telephone Company, Inc.
Associated Industries of Missouri
AT&T Communications of the Southwest, Inc.
ACI Corp.
TCG St. Louis, Inc.
TCG Kansas City, Inc.
Sprint Communications Company L.P.
Birch Telecom of Missouri, Inc.
State of Missouri
Show Me competition, Inc.
Nextlink Missouri, Inc.
Intermedia Communications, Inc.
City of Springfield, Missouri
Digital Teleport, Inc.
e. spire Communications, Inc.
Missouri Cable Television Association
McLeodUSA Telecommunications Services
MCI Telecommunications Corporation
MCImetro Access Transmission Services, LLC
WorldCom Technologies, Inc.
Brooks Fiber Communications of Missouri, Inc.
Advanced Communications Group, Inc.
Telecommunications Resellers Association
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, Inc.
St. Louis Gateway SeniorNet

8. That this order shall become effective on March 9, 1999.

BY THE COMMISSION

A handwritten signature in cursive script, reading "Dale Hardy Roberts".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dippell, Senior Regulatory Law Judge