

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
December 20, 2001**

CASE NO: TO-2002-185

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Mimi B McDonald/TM
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101


Craig S. Johnson
Lisa C. Chase
Andreck Evans Milne Peace & Johnson
P.O. Box 1438
Jefferson City, MO 65201

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

W.R. England, III
Paul A. Boudreau
Brydon, Swearingen & England P.C.
P.O. Box 456
Jefferson City, MO 65102

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copies:

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 20th
day of December, 2001.

In the Matter of the Application of)
Southwestern Bell Telephone Company)
to Transfer Property and Ownership of)
Stock Pursuant to Section 392.300, RSMo)

Case No. TO-2002-185

ORDER APPROVING REORGANIZATION

Syllabus: Southwestern Bell Telephone Company, a Missouri corporation regulated as a telephone corporation by this Commission, requests authority to reorganize as a Texas limited partnership. The Commission determines that there will be no effect on customers or on tax revenues, the reorganization will not be detrimental to the public interest, and the Commission approves the application.

The transaction: On October 12, 2001, Southwestern Bell Telephone Company (Bell Missouri), Southwestern Bell Texas, Inc., and Southwestern Bell Telephone L.P. d/b/a Southwestern Bell Telephone Company (Bell LP; collectively Applicants) filed a verified application requesting that the Commission approve a corporate restructuring and stock transfer. The effect of these transactions will be to convert Bell Missouri, a Missouri corporation, into Bell LP, a Texas limited partnership. The Applicants state that the purpose of the conversion is to achieve tax savings, that the conversion will be transparent to its customers, and will have no effect on Missouri tax revenues. They request expedited approval, with a decision by December 20.

The transaction is rather complicated, but the end result is that the entity providing telephone service in Missouri will change from a Missouri corporation directly owned by SBC Communications, Inc. to a Texas limited partnership that is a second tier subsidiary of SBC. The transaction essentially consists of the following steps:

1. SBC will form a new subsidiary, Southwestern Bell Texas Holdings, Inc. (Texas Holdings), as a Delaware corporation.
2. In turn, Texas Holdings will form two subsidiaries: SWBT Texas L.L.C. and Southwestern Bell Texas, Inc. (Bell Texas), a Texas corporation. Texas Holdings will own 99 percent of Bell Texas and SWBT Texas L.L.C. will own one percent.
3. Bell Missouri and Bell Texas will merge with Bell Texas being the surviving entity.
4. Bell Texas will convert itself under Texas law into a Texas limited partnership, Bell LP. SWBT Texas L.L.C. will be the general partner and will own one percent of the partnership, and Texas Holdings will be the limited partner and will own 99 percent of the partnership.
5. Bell LP will elect to be treated as an association taxable as a corporation for federal income tax purposes.

The filings: On October 29, the Office of the Public Counsel, the Small Telephone Company Group¹ and the Missouri Independent Telephone Company Group,² filed separate responses and requests for hearing. The STCG and the MITG also requested intervention, which was granted by an order issued November 27. These three parties raise questions about whether Bell LP will need to apply for and receive a certificate of service authority before it can begin serving customers and whether Bell LP will be regulated as a "price cap" company in the same way that Bell Missouri is. The Staff of the Commission also filed a response on October 29.

On November 8, Applicants filed a reply to the responses. Applicants assert that Bell Missouri can freely assign the charter under which it operates with no need to apply for a certificate and that any successor in interest will retain its price cap status.

¹ The Small Telephone Company Group, or STCG, consists of 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, KLM Telephone Company, Kingdom 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, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Spectra Communications Group, Inc., and Steelville Telephone Exchange, Inc.

² The Missouri Independent Telephone Company Group, or MITG, consists of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company.

On November 15, 2001, the Staff filed its recommendation. Staff states that the Commission should review the transaction in light of the "not detrimental to the public interest" standard, and states that the transaction is not detrimental to the public interest. Staff agrees with Applicants that Bell LP will not need a certificate of service authority, but will continue to serve customers pursuant to the franchise granted to Bell Missouri's predecessors. Staff states that there will be no effect on the tax revenues of any political subdivisions, nor will there be any change in the Missouri income tax classification of the operating entity, as a result of the transactions. Staff also states that price cap regulation is not dependent on the organizational structure of the regulated company, and so Bell LP will be regulated in the same way that Bell Missouri is. Finally, Staff recommends that the Commission order Bell LP to file an adoption notice and revised title sheets along with evidence of the registration of the name with the Missouri Secretary of State. No party responded to this final recommendation, it seems reasonable, and the Commission will order it.

Pursuant to Commission orders, the parties filed briefs on the issues raised by the application. In their briefs, the parties further explained the positions they had taken in their previous pleadings, and offered additional authorities to support those positions.

Decision: The standard to be applied to this application is that the Commission must approve it unless approval would be detrimental to the public interest. No party has raised any significant arguments about how it could prove detrimental to the public interest. The main question the parties raised is with whether Bell LP will need to apply for and receive a certificate of service authority before it can begin serving customers.

Applicants argue that it will not need to do so because of Bell Missouri's unique status as a telephone company incorporated pursuant to Article V, Chapter 21 of the Revised Statutes of Missouri 1879. The Applicants claim that the franchise granted to its predecessor is perpetual and freely assignable. Staff agrees, with the caveat that it is only assignable if the assignment is not detrimental to the public interest. The STCG and the MITG, and, to a lesser extent, Public Counsel, argue that Bell LP should be treated just like another new company seeking to provide telephone service in Missouri, and be required to apply for a certificate of service authority. They point out that the Commission normally requires a new entity to apply for a certificate of service authority even if that new entity is simply assuming the operations of a currently-certificated company. The Commission agrees with the Applicants and Staff that the authority under which Bell Missouri operates is different than the authority under which every other telephone company operates, and accordingly the ability to assign that authority is different. It is not inconsistent to find, as the Commission does here, that Bell Missouri can assign the authority under which it operates (so long as that assignment is not detrimental to the public interest) but that a company that operates under a certificate of service authority cannot assign that authority.

Public Counsel also raised the question of whether Bell LP will operate under price cap regulation or rate of return regulation. Public Counsel notes that the price cap statute (Section 392.450, RSMo 2000) does not explicitly provide that price cap status may be transferred to a new entity. Public Counsel also suggests that Bell LP "must qualify on its own terms for price cap regulation." However, Public Counsel does not disagree with the representations in the verified application that the only change as a result of the proposed

transactions will be to the business organization of the regulated company. Nothing will change in the actual operations and nothing will occur that would make Bell LP ineligible to operate under the same type of regulation as Bell Missouri. The Commission determines that SWBT LP will be regulated as a price cap company just as Bell Missouri is now regulated.

The parties also briefed, at the Commission's direction, the question of whether the Commission would have any different oversight over Bell LP than it now has over Bell Missouri. The Commission determines that, as a practical matter, the oversight it will have over Bell LP will not be significantly different than the oversight it now has over Bell Missouri.

The Commission concludes that there will be no effect on customers or on tax revenues, the reorganization will not be detrimental to the public interest, and the Commission will approve the application.

IT IS THEREFORE ORDERED:

1. That the application for authority to permit corporate restructuring is granted, and the Applicants may complete the transactions set out in the application.
2. That the requests for hearing filed on October 29, 2001, are denied.
3. That Southwestern Bell Telephone L.P. d/b/a Southwestern Bell Telephone Company shall, pursuant to 4 CSR 240-2.060(16), file an adoption notice and revised title sheets along with evidence of the registration of its fictitious name with the Missouri Secretary of State no later than January 18, 2002.

4. That this order shall become effective on December 30, 2001.

BY THE COMMISSION



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

(SEAL)

Simmons, Ch., Murray, Lumpe, Gaw and Forbis, CC., concur

Mills, Deputy Chief Regulatory Law Judge

Att./Secretary: Mills / Bryce

Date Circulated 12-19 CASE NO. TD-2002-185

KS
Stimmons, Chair

AM
Murray, Commissioner

MS
Lampe, Commissioner

RS
Gaw, Commissioner

RS
Forbis, Commissioner

Agenda Date 12-20

Action taken: 3-0 AS

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 20th day of Dec. 2001.

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

