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FILED³

NOV 08 2001

November 8, 2001

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

Missouri Public
Service Commission

In re: Southwestern Bell Telephone Company's, Southwestern Bell Texas, Inc.,'s, and Southwestern Bell Telephone, L.P.,'s, d/b/a Southwestern Bell Telephone Company's, Joint Application for Order Permitting Corporate Restructuring Pursuant to Section 392.300, RSMo., 4 CSR 240-2.060(1), and 4 CSR 240-2.060(8)

Case No.: TO-2002-185

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission is the Reply of Southwestern Bell Telephone Company, Southwestern Bell Texas, Inc., and Southwestern Bell Telephone, L.P. to: (1) Application to Intervene, Response and Request for Hearing of the Missouri Independent Telephone Company Group; (2) Office of Public Counsel's Response and Request for Hearing; (3) Application to Intervene, Response, and Request for Hearing of the Small Telephone Company Group; and (4) Staff's Response to Application.

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

Very truly yours,

Mimi B. MacDonald /TM

Mimi B. MacDonald

Enclosure

cc: Attorneys of Record

FILED³

NOV 08 2001

Missouri Public
Service Commission

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

In the Matter of the Application of)
Southwestern Bell Telephone Company) Case No. TO-2002-185
To Transfer Property and Ownership of)
Stock Pursuant to Section 392.300, RSMo.)

**REPLY OF SOUTHWESTERN BELL TELEPHONE COMPANY,
SOUTHWESTERN BELL TEXAS, INC. AND
SOUTHWESTERN BELL TELEPHONE, L.P. TO:**

- (1) APPLICATION TO INTERVENE, RESPONSE AND REQUEST FOR HEARING OF
THE MISSOURI INDEPENDENT TELEPHONE COMPANY GROUP;**
(2) OFFICE OF PUBLIC COUNSEL'S RESPONSE AND REQUEST FOR A HEARING;
**(3) APPLICATION TO INTERVENE, RESPONSE, AND REQUEST FOR HEARING OF
THE SMALL TELEPHONE COMPANY GROUP; AND**
(4) STAFF'S RESPONSE TO APPLICATION

Comes now Southwestern Bell Telephone Company ("SWBT"), Southwestern Bell Texas, Inc. ("SWBT Texas") and Southwestern Bell Telephone L.P. ("SWBT, L.P.") and, for their Reply to the: (1) Application to Intervene, Response and Request for Hearing of the Missouri Independent Telephone Company Group ("MITG's Response"); (2) Office of Public Counsel's Response and Request for Hearing ("OPC's Response"); (3) Application to Intervene, Response, and Request for Hearing of the Small Telephone Company Group ("STCG's Response"); and (4) Staff's Response to Application ("Staff's Response"), states as follows:

Executive Summary

The responses filed by MITG, STCG, OPC and Staff all address the issue of whether SWBT, L.P. is required to obtain a certificate of service authority from the Missouri Public Service Commission ("the Commission"). None of the comments, however, address the unique circumstances under which SWBT operates in the State of Missouri which makes an application for a certificate unnecessary even if, contrary to SWBT's view and the Commission's decisions in the cases cited herein, an application for a certificate would otherwise be required.

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SWBT's predecessor corporations were chartered to provide service as a result of incorporation as telephone and telegraph companies pursuant to Article V, Chapter 21 of the Revised Statutes of Missouri of 1879. This franchise grant preceded the establishment of the Commission pursuant to legislation passed in 1913. The legal significance of this franchise is that it created a valid, binding, and enforceable contract between the State of Missouri and SWBT. Moreover, these contracts rights are assignable to SWBT Texas, and, in turn, to SWBT, L.P. The Commission, therefore, has no authority to require SWBT, L.P. to apply for a certificate of service authority.

OPC's Response also raises three additional issues, none of which requires a hearing in this case. First, OPC questions whether SWBT, L.P. will operate as a price cap company. As discussed herein, SWBT, L.P., as a matter of law, will assume all of the rights and obligations of SWBT including SWBT's rights and obligations to operate as a price cap telecommunications company pursuant to Section 392.245 RSMo. 2000.

Second, OPC questions whether SWBT, L.P. will provide the same quality of service as SWBT currently provides to its customers. SWBT, L.P. customers will continue to receive telecommunications service in the same manner and with the same quality of service as before the restructuring. After the transaction, SWBT, L.P. will employ the same personnel, will use the same facilities, and will provide the same services at the same price and with the same quality as SWBT does today. In addition, the Commission retains the same rights and authority to ensure SWBT, L.P. complies with applicable statutes and quality of service rules as it has with respect to SWBT.

Third, OPC questions whether the proposed corporate restructuring will have adverse tax consequences in Missouri. Pursuant to Section 392.300.1, RSMo. 2000, and 4 CSR 240-

2.060(8)(F), an application such as that presented here must include a statement of any adverse tax consequences to municipalities and other political subdivisions. As made clear in the Joint Application for Order Permitting Corporate Restructuring Pursuant to Section 392.300, RSMo., 4 CSR 240-2.060(1) and 4 CSR 240-2.060(8) ("Joint Application") and in the affidavit of Paul W. Stephens attached to that Application, there is no adverse tax impact on any political subdivision in Missouri from this reorganization. Further, although not required by statute or rule, the Joint Applicants explain in the Stephens Affidavit that the proposed transaction will have no adverse tax consequences to the State of Missouri. Moreover, no political subdivision has raised any objection to the Joint Application. OPC has raised no claim and has provided no evidence of any adverse impact on any political subdivision.

None of the issues raised by any of the responses require the Commission to conduct a hearing on this matter. The transaction at issue here is not detrimental to the public interest, and will be transparent to SWBT's customers, the State and its political subdivisions. The Commission should, therefore, approve the Joint Application.

Procedural Background

1. On October 12, 2001, SWBT, SWBT Texas, and SWBT, L.P. (collectively referred to as "Joint Applicants") filed their Joint Application.
2. On October 17, 2001, the Commission entered its Notice Setting Time for Response. In its Notice, the Commission ordered all responses to the Joint Application to be filed no later than October 29, 2001.
3. On October 29, 2001, the MITG filed its Response, OPC filed its Response, the STCG filed its Response, and Staff filed its Response.

4. For the following reasons, SWBT, SWBT Texas, and SWBT, L.P. respectfully request the Commission to: (a) deny all requests for a hearing; and (b) approve their Joint Application in an expedited manner, but in any event not later than December 20, 2001.

I. SWBT Is Incorporated In The State of Missouri Under Article V, Chapter 21 of the Revised Statutes of Missouri of 1879. SWBT's Franchise Is Freely Assignable to SWBT, L.P. And, Therefore, SWBT, L.P. Does Not Need Its Own Certificate Of Service Authority.

5. MITG, OPC, and STCG contend that SWBT, L.P. should be required to apply for a certificate of service authority. (See MITG's Response, paragraph 7; OPC's Response, paragraph 3; and STCG's Response, paragraphs 8-10). Although Staff does not state that SWBT, L.P. should be required to apply for a certificate of service authority, Staff states: "it has not been the more recent practice of the Commission to transfer certificates of telecommunications companies involved in a corporate restructuring." (See Staff's Response, paragraph 3).

6. These contentions do not, however, address SWBT's unique status in Missouri where it operates pursuant to a charter granted by the State and not pursuant to a certificate of convenience and necessity or certificate of service authority granted by the Commission. The Joint Applicants do not seek Commission approval to transfer any certificate of convenience and necessity or certificate of service authority, as SWBT does not operate pursuant to any such certificate granted by the Commission. As is explained in detail, below, SWBT is incorporated in the State of Missouri under Article V, Chapter 21 of the Revised Statutes of Missouri of 1879. That authority is freely transferred and does not require a new certification for SWBT, L.P. The historical background of SWBT and the legal significance of SWBT's existence is described below.

A. Historical Background of SWBT

7. On December 3, 1879, The Bell Telephone Company of Missouri (“Bell Telephone”) was incorporated as a telephone and telegraph company pursuant to Article V, Chapter 21 of the Revised Statutes of Missouri of 1879. (See City of St. Louis v. Bell Tel. Co., 96 Mo. 623, 10 S.W. 97 (Mo. 1888); see also Exhibit 1, Articles of Association, dated December 3, 1879).¹ Bell Telephone’s Articles of Association provide that the undersigned incorporators: “desir[e to form] a corporation for the purpose of constructing, owning, operating, and maintaining lines of telephone and telegraph.” (See Exhibit 1, Articles of Association, dated December 3, 1879).

8. On August 24, 1882, the Missouri and Kansas Telephone Company was incorporated as a telephone and telegraph company pursuant to Article V, Chapter 21 of the Revised Statutes of Missouri of 1879. (See Exhibit 2, Articles of Association, dated August 23, 1882; see also Exhibit 3, Certificate of Corporate Existence, dated August 24, 1882). The Certificate of Corporate Existence issued by the Missouri Secretary of State certifies that the Missouri and Kansas Telephone Company, and “their associates and successors, have become a body corporate” and “have all the rights and privileges granted to telegraph and telephone corporations under the laws of this State.” Id.

9. In 1913, Bell Telephone filed an Affidavit of Change of Name with the Secretary of State’s office, certifying its change of name to “The Southwestern Telegraph and Telephone Company.” (See Exhibit 4, Affidavit of Name Change, dated December 24, 1913).

¹ Due to time constraints associated with filing this Reply, Joint Applicants were not able to obtain certified copies of any of the Exhibits listed in this Reply from the Missouri Secretary of State’s Office. However, should the Commission desire certified copies of these documents, Joint Applicants would be willing to file such documents.

Additionally, Joint Applicants note that the copy quality of the Exhibits is sub par. This quality is the best quality that Joint Applicants can provide as this is the quality of the original documents, dated from 1879 to 1917, that are on file with the Missouri Secretary of State.

10. In 1916, through mergers and a name change, the Missouri and Kansas Telephone Company and The Southwestern Telegraph and Telephone Company became Southwestern Bell Telephone Company ("SWBT"). (See Exhibit 5, Board of Directors Minutes, dated December 29, 1916; see also Exhibit 6, Affidavit of Change of Name, dated January 3, 1917).

11. Since its incorporation, SWBT, and its predecessors (Bell Telephone, The Southwestern Telegraph and Telephone Company, and The Missouri and Kansas Telephone Company), have been providing telecommunications services continuously to the residents of the State of Missouri.

B. Legal Significance of SWBT's Existence

12. Article V, Chapter 21 of the Revised Statutes of Missouri was specifically designed for the incorporation of telegraph and telephone companies. The State of Missouri granted companies incorporated under Article V, the "power to construct, own, operate, and maintain lines of telephone and magnetic telegraph between such points as they may, from time to time, determine." (See Section 875, RSMo. 1879).

13. When a state enacts a statute like Article V, granting telephone companies the right to use and occupy the public roads to provide telephone service to the public, the state tenders an "offer" to companies to incorporate under the statute, and enter into a contract with the state to provide telephone service to the state's population. (See, e.g. Los Angeles County v. S. Cal. Tel. Co., 196 P.2d 773, 777-78 (Cal. 1948) (holding that California's counterpart to Article V was a "continuing offer extending to telephone and telegraph companies to use the highways"); see also City of Lansing v. Mich. Power Co., 150 N.W.250, 253 (Mich. 1914)).

14. Courts throughout the country recognize that by incorporating under the statute and erecting, constructing, and maintaining telephone lines pursuant to the statute, a telephone

company “accepts” the state’s offer, thereby entering into a valid and enforceable contract with the state. (See e.g. Russell v. Sebastian, 233 U.S. 195, 205-208 (1914) (gaslight company); see also TCG Detroit v. City of Dearborn, 16 F.Supp. 2d 785 (E.D. Mich. 1998), aff’d 206 F.3d 618 (6th Cir. 2000); see also Postal Tel.-Cable Co. v. RR Comm’n of Cal, 254 P. 258, 261 (Cal. banc 1927) (telegraph company); see also City of Des Moines v. Iowa Tel. Co., 162 N.W. 323, 327 (Iowa 1917); see also NW Tel. Exch. Co. v. City of Minneapolis, 86 N.W. 69, 73 (Minn. 1901); see also City of Lansing Michigan v. Mich. Power Co, 150 N.W. 250, 252-252 (Mich. 1914) (electric company); see also S.Bell Tel. & Tel. Co. v. City of Meridian, 131 So. 2d 666, 670 (Miss. 1961)).

15. For example, in City of Lansing v. Michigan Power Co., 150 N.W. 250 (Mich. 1914), an electric company was incorporated, installed its service facilities in the public streets, and began providing electric service to the public pursuant to a state statute authorizing the electric company to use the public streets without first obtaining municipal consent. The court held that the statute “tendered a franchise” to the company. Id. at 253.

[S]uch franchise was accepted by [the electric company] by way of installing its service equipment in the public streets and providing a service of a public utility; and this tender and acceptance constitutes a contract between the state and [the electric company].

Id. (Emphasis added). The court further explained:

It is true that it is not every act of the Legislature providing for incorporation or relating to corporate rights and privileges that will constitute a contract, but when the Legislature by act invites a public utility corporation to expend money in establishing plant, upon the grant of the right to use the public streets, then, upon accepting the grant and establishing the plant and installing the public service equipment in the streets, there has come into existence a contract beyond the power of any division of the government to impair by recall of the grant to be upon the public streets.

Id.

16. In recent decisions, both the District Court for the Eastern District of Michigan and the Sixth Circuit Court of Appeals extended the Michigan Supreme Court's reasoning in City of Lansing to Ameritech, which was incorporated in 1883 under a Michigan statute that was similar to Missouri's Article V. (See TCG Detroit v. City of Dearborn, 16 F. Supp. 2d 785, 793-97 (E.D. Mich. 1998), aff'd 206 F. 3d 618, 625-26 (6th Cir. 2000)). Both courts held that when Ameritech organized under the Michigan counterpart to Article V, constructed its facilities on the public roads, and began providing telephone service to the Michigan population, it accepted Michigan's tender of a state-wide franchise. (See City of Dearborn, 16 F. Supp. 2d at 796).

17. Therefore, by enacting Article V, Missouri tendered an "offer" to telephone companies to incorporate in Missouri under Article V. Through its act of incorporation and later acts of constructing and maintaining its telephone facilities, SWBT "accepted" Missouri's offer, thereby creating a valid and binding contract between itself and the State of Missouri.

18. As consideration for its contract with Missouri, SWBT expended considerable sums of money in establishing and maintaining "a proper and adequate communications service," benefiting the population of Missouri. (See Los Angeles County v. S. Cal. Tel. Co., 196 P.2d 773, 776 (Cal. 1948); see also City of Lansing, 150 N.W. at 253; see also State ex. inf. McKittrick v. SW Bell Tel. Co., 92 S.W.2d 612 (Mo. 1936)).

19. In McKittrick, the Missouri Attorney General sought to prohibit SWBT from maintaining its poles and wires on state highways, arguing that Article IV, Section 46 of the Missouri Constitution, prohibiting the General Assembly from granting a corporation a "thing of value," forbade the legislature from permitting SWBT to place and maintain its facilities on and under the state highways free of charge. Id at 613. In rejecting this argument, the Missouri Supreme Court recognized that SWBT "is a public utility engaged in furnishing telephone

service to the general public. The General Assembly no doubt considered that benefit to the general public arising from the promotion of the extension of such service justified the granting of the privilege of the use of the highways.” Id. at 614. The court held that “[w]hile the benefit may not be said to be a formal consideration, as that term is generally understood, yet it is that benefit and that consideration which takes this grant out of the class of grants prohibited by the Constitution.” Id. Thus, the benefit to the public was found to be adequate consideration to allow the legislature to permit SWBT to place and maintain its facilities on state highways. (See Id.; see also Wash. Univ. v. Baumann, 341 Mo. 708, 715, 108 S.W.2d 403, 406 (1937) (“[T]he objects for which the corporation was created. . . were deemed by the legislature to be beneficial to the community, and this benefit constitutes the consideration of the contract, and no other is required to support it.”); see also State ex. rel. Kan. City v. E. Fifth St. Ry. Co. 140 Mo. 539, 41 S.W.955, 956 (1897) (recognizing that consideration from the railway for franchise granted from the city was “benefit which the public will derive from its use and exercise”)).

20. Thus, all the essential elements to the formation of a contract (offer, acceptance and consideration) created a valid, binding and enforceable contract between the State of Missouri and SWBT. The terms of the contract were and are governed by Article V.

21. Moreover, the rights granted to SWBT by its state-wide franchise are perpetual. (See State on Inf. of McKittrick ex. rel. City of Trenton v. Missouri Public Service Corp., 174 S.W.2d 871 (Mo. 1943) (if there is no limitation in the general law of the state as to the duration of franchises for public utilities, it is perpetual)).

22. SWBT’s perpetual franchise rights are vested property and contract rights that cannot be impaired or taken and are constitutionally protected by Article I, Sections 13 and 26 of the Missouri Constitution and Article I, Section 10, and the Fourteenth Amendment of the United

States Constitution. (See e.g. Sunset Tel. & Tel. Co. v. City of Pomona, 172 F. 829, 837 (9th Cir. 1909); see also Western Union Telegraph Co. v. Hopkins, 160 Cal. 106, 120 (Ca. 1911); see also Iowa Tel. Co. v. City of Keokuk, 226 F. 82, 90 (S.D. Iowa 1915); see also City of Lansing v. Mich. Power Co., 150 N.W. 250, 253 (Mich. 1914); see also Mountain States Tel. and Tel. Co. v. Town of Belen, 244 P.2d 1112, 1121 (N.M. 1952)).

23. The Commission lacks the power to alter the contract rights granted to SWBT by the State of Missouri in 1879 to its predecessor corporation, Bell Telephone, and in 1882 to its predecessor corporation, The Missouri and Kansas Telephone Company because SWBT's contract rights are assignable. (See State ex rel. Wabash Ry. Co. v. Roach, 184 S.W. 969 (Mo. 1916); see also Lawrence v. Hennessy, 65 S.W. 717, 718 (Mo. 1901) (recognizing the valid assignment of a franchise from Southwestern Light & Fuel Company to Acme Gas Company—the former company conveyed not only its tangible property, but also, expressly, its franchise in its deed of trust which covered all of its property, “with all the rights, privileges, and appurtenances thereunto belonging”); see also MCI Metro Access Transmission Services, Inc. v. City of St. Louis, 941 S.W.2d 634, 642-643 (Mo. App. 1997) (in the absence of any applicable statutory or constitutional provision forbidding assignment, it is generally held that assignments are permissible); see also State ex. rel. City of St. Louis v. Laclede Gas-Light Co., 14 S.W. 974 (Mo. 1890) (holding that a contract that was entered into with the St. Louis Gas-Light Company contemplates that all franchise rights granted to the original company would be “granted to another company whose longer lease of corporate life would enable it to perform the contract and fulfill the various conditions”)).

24. In State ex rel. Wabash Ry. Co. v. Roach, 184 S.W. 969 (Mo. 1916), a railroad Company was incorporated in the 1860s under a Missouri statute which provided that railroads

incorporated in Missouri were entitled to certain rights and privileges. Id. at 971. Pursuant to this incorporation and the railroad's subsequent construction and operation of a railroad within Missouri, the State of Missouri granted to the railroad, "its successors and assigns, the franchises, rights, and privileges to locate, construct, own, maintain and operate a railroad as a common carrier for hire." Id. The court held that this incorporation granted the railroad a franchise/charter to do business as a railroad within Missouri. Id. at 972-973. Following numerous mortgagees, foreclosure sales, consolidations and sales, the franchise/charter of the Missouri railroad corporation was ultimately transferred to an Indiana corporation. Id. at 972. The court expressly held that the transfer of this charter (which had originated from the incorporation of the company under the Missouri incorporation statutes) to the Indiana company was proper, and effectively transferred the rights in the charter. Id. at 973. In reaching this holding, the court explained that the franchises of a corporation can be divided into two categories: (1) the right of being a body corporate; and (2) all other grants of power or privileges. Id. at 972. The court held that a corporation's rights in the first class are not assignable, but its rights in the second class of franchises are freely transferable and assignable. Id. The court placed the railroad's right to do business as a railway company in Missouri (which has originated from its incorporation) into the second category of freely assignable rights. Id. The Court explained: "[t]his franchise or right was subject to sale or mortgage along with the physical company." Id. The court, therefore, held that the Indiana corporation was the "legal owner of [the] charter rights" originally granted to the Missouri corporation by the State of Missouri. Id. at 973.

25. Like the railroad in Wabash Railway, SWBT was incorporated under a Missouri incorporation statute which granted it certain rights and privileges. These rights and privileges

are franchise/charter rights that are vested property interests belonging to SWBT. Like the railroad in Wabash Railway, SWBT's franchise/charter is transferable to a non-Missouri corporate entity, even though the franchise/charter originated from incorporation of a Missouri corporation. Since SWBT's contract rights are assignable, it can assign its state-wide perpetual franchise to SWBT Texas, which in turn can assign it to SWBT, L.P. As discussed in Section II, below, this assignment will occur by operation of law pursuant to merger and conversion statutes of Missouri and Texas.

26. Any attempt to require SWBT, L.P. to obtain a certificate of service authority is preempted by State statutes and void because it impairs SWBT's rights and privileges granted under its contract with the State of Missouri, protected by Article I, Section 13, of the Missouri Constitution and Article I, Section 10 of the United States Constitution.

27. Further, any attempt to require SWBT Texas or SWBT, L.P. to obtain a certificate of service authority is preempted by State statutes and is void because it deprives SWBT of its vested property rights arising out of its contract without due process of law or without just compensation in violation of Article I, Section 26 of the Missouri Constitution and the Fourteenth Amendment of the United States Constitution.

28. Thus, SWBT, L.P. cannot be required to apply for a certificate of service authority. Any claims to the contrary must be summarily dismissed.

29. Moreover, even if SWBT did not have a franchise and operated under a certificate of convenience and necessity, this Commission has previously transferred certificates of convenience and necessity or service authority. (See In the Matter of the Application of United Telephone Company of Missouri, Capital City Telephone Company and Midstate Telephone Company for Authority for Capital City Telephone Company and Midstate Telephone Company)

to Merge With and Into Telephone Company of Missouri as the Surviving Corporation, Case No. 18, 617, December 12, 1979; see also In the Matter of the Application Requesting Authority (1) for GTE North Incorporated to Transfer Certain Assets to GTE Midwest Incorporated, (2) for the Merger of Contel of Iowa, Contel of Missouri, Inc., Contel of Minnesota, Inc., the Kansas State Telephone Company, Contel of Kansas, and Contel System of Missouri, Inc. into GTE Midwest Incorporated, and (3) for the Transfer of Certificates of Public Convenience and Necessity, Case No. TM-91-1, December 8, 1992). Thus, even if SWBT were operating under a certificate of convenience and necessity, such certificate would be transferable to SWBT Texas which, in turn, could transfer it to SWBT, L.P. It is, therefore, well-established that SWBT, L.P. does not need to apply for a new certificate of service authority.

II. SWBT, L.P. Will Be A Price Cap Telecommunications Company

30. OPC argues that Section 392.245, RSMo. does not specifically authorize the transfer of price cap status with the exchange of assets or with the transfer of stock ownership. (See OPC's Response, paragraph 4). Specifically, OPC states that the price cap determination does not follow the assets as was demonstrated in the sale of some of the GTE Midwest exchanges to Spectra Communications in Case No. TM-2000-182.

31. Contrary to OPC's apparent misunderstanding, this transaction is not a transfer of assets as was the case with the GTE-Spectra transaction. Instead, it is a reorganization accomplished via a merger with a Texas corporation and conversion of that Texas corporation to a Texas limited partnership. Under both Texas and Missouri law, under that reorganization, SWBT, L.P. automatically continues all of the rights, duties and obligations of SWBT in Missouri.

32. Specifically, Section 351.458(1), RSMo. 2000 provides:

One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized. . .

33. Section 351.458(2) provides:

The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations; except, if the surviving or new corporation is to be governed by the laws of any state other than this state, to the extent that the laws of the other state shall otherwise provide.

34. Section 351.450, RSMo. provides:

When such merger or consolidation has been effected: . . .

Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

35. Texas has a similar statute, Bus. Corp. Act Art 5.01(A), which provides for mergers of “one or more domestic corporations. . .with one or more domestic or foreign corporations. . . .” Texas Bus. Corp. Act. Art 5.01(A).

36. Further, like Missouri, in Texas, the merged entity has “all rights, title and interest to all real estate and other property owned by each domestic or foreign corporation. . .that is a party to the merger. . .without any further act or deed, and without any transfer or assignment having occurred. . . .” Tex. Bus. Corp. Act. Art 5.06(A)(2).

37. Moreover, like Missouri, in Texas, when the merger takes effect:

all liabilities and obligations of each domestic or foreign corporation and other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign corporations and other entities in the manner set forth in the plan of merger, and each surviving or new domestic or foreign corporation, and each surviving or new entity to which a liability or obligation shall have been allocated pursuant to the plan of merger, shall be the primary obligor therefor and, except as otherwise set forth in the plan of merger or as otherwise provided by law or contract, no other party to the merger, other than a

surviving domestic or foreign corporation or other entity liable thereon at the time of the merger and no other new domestic or foreign corporation or other entity created thereby, shall be liable therefore.

Tex. Bus. Corp. Act. art 5.06(A)(3).

38. Further, when SWBT Texas converts to SWBT, L.P., under Texas law, SWBT, L.P. automatically continues all of the rights, duties, and obligations of SWBT Texas. Specifically, Tex. Bus. Corp. Act Art 5.20 provides:

- A. When a converting entity takes effect:
- (1) the converting entity shall continue to exist, without interruption, but in the organizational form of the converted entity rather than in its prior organizational form;
 - (2) all rights, title and interest to all real estate and other property owned by the converting entity shall continue to be owned by the converted entity in its new organizational form without reversion or impairment, without further act or deed, and without any transfer or assignment having occurred, but subject to any existing liens or other encumbrances thereon;
 - (3) all liabilities and obligations of the converted entity shall continue to be liabilities and obligations of the converted entity in its new organizational form without impairment or diminution by reason of the conversion; . . .

39. Thus, it is clear under both Missouri and Texas law, SWBT, L.P. automatically continues all of the rights, duties and obligations of SWBT.

III. SWBT Customers Will Continue To Receive Telecommunications Service In The Same Manner and With The Same Level Of Quality As Before The Restructuring.

40. OPC contends that it is concerned about the effect this transaction may have on the quality of service in Missouri. (OPC's Response, paragraph 6).

41. Joint Applicants have previously stated that SWBT customers will continue to receive telecommunications service in the same manner and with the same level of quality as before the restructuring. (See Joint Application, paragraph 6). SWBT, L.P. will utilize the same assets and personnel to provide the same services at the same price and same quality as SWBT

provides today. Moreover, the Commission retains its full power to ensure that SWBT, L.P continues to meet all applicable quality of service rules. Accordingly, there is no requirement and no need for a hearing on this point.

IV. The Proposed Corporate Restructuring Will Have No Adverse Tax Consequences In Missouri

42. OPC contends that the Commission should investigate or require a disclosure of potential adverse corporate income tax impact, if any, and other potential adverse tax impact, if any, for the state, and its political subdivisions that may result from the transaction. (OPC's Response, paragraph 7).

43. OPC's request should be denied. Section 392.300 only requires Joint Applicants to explain what, if any, impact, such merger will have on the tax revenues of the political subdivisions in which any structures, facilities, or equipment of the companies involved in such disposition are located. Specifically, Section 392.300, RSMo. 2000 provides in pertinent part:

. . . Any person seeking any order under this subsection authorizing the sale, assignment, lease, transfer, merger, consolidation, or other disposition, direct or indirect, of any telecommunications company shall, at the time the application for any such order, file with the commission a statement in such form, manner and detail as the commission shall require, as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation, or other disposition will have on the tax revenues of the political subdivisions in which any structures, facilities, or equipment of the companies involved in such disposition are located.

(Emphasis added). Further, 4 CSR 240-2.080(8) provides in pertinent part:

In addition to the requirements of section (1), applications for authority to merge or consolidate shall include:

(F) For gas, electrical, water, sewer and telecommunications companies, a statement of the impact, if any, the merger or consolidation will have on the tax revenues of the political subdivision in which any structures, facilities or equipment of the companies are located.

(Emphasis added).

44. Joint Applicants provided the Affidavit of Paul W. Stephens. On Behalf of Joint Applicants, he stated:

Having reviewed The Plan of Merger and The Plan of Conversion, on behalf of Southwestern Bell Telephone Company, Southwestern Bell Texas, Inc. and Southwestern Bell Telephone, L.P., I have determined that the conversion of Southwestern Bell Telephone Company from a Missouri Corporation to a Texas Limited partnership will have no impact on the tax revenues of the State of Missouri or any of its political subdivisions in which Southwestern Bell Telephone Company's structures, facilities or equipment are located since Southwestern Bell Telephone, L.P. will continue to own and operate the various structures, facilities and equipment of Southwestern Bell Telephone Company in Missouri and will pay the amount of taxes required by law.

(See Joint Application, Exhibit D, Affidavit of Paul W. Stephens). Thus, Joint Applicants have complied with all requirements of Section 392.300, RSMo. 2000 and 4 CSR 240-2.080(8). Further, as indicated in the portion of the Affidavit of Paul W. Stephens, quoted above, SWBT has gone beyond the requirements of the statute and rule and provided assurance that no adverse tax consequence to the State of Missouri will result.

45. Moreover, OPC has provided no evidence or allegation that any political subdivision will experience an adverse impact. Further, no political subdivision has raised any objection to the Joint Application. OPC's request should, therefore, be denied.

WHEREFORE, Southwestern Bell Telephone Company, Southwestern Bell Texas, Inc. and Southwestern Bell Telephone, L.P., respectfully request that the Commission on or before December 20, 2001, approve their Application for Order Permitting Corporate Restructuring Pursuant to Section 392.300, R.S.Mo., 4 CSR 240-2.060(1) and 4 CSR 240-2.060(8), together with any further and additional relief the Commission deems just and proper.

Respectfully submitted,

BY Mimi B. MacDonald /tm

PAUL G. LANE, #27011

LEO J. BUB, #34326

ANTHONY K. CONROY, #35199

MIMI B. MACDONALD, #37606

Attorneys for Southwestern Bell Telephone
Company, Southwestern Bell Texas, Inc.
and Southwestern Bell Telephone, L.P.

One Bell Center, Room 3510

St. Louis, Missouri 63101

(314)235-4094 (Telephone)

(314)247-0014 (Facsimile)

e-mail address: mimi.macdonald@sbc.com

CERTIFICATE OF SERVICE

Copies of this document were sent via the United States mail, postage prepaid or were served via hand-delivery to the following parties on November 8, 2001.

Mimi B. MacDonald /tm

Mimi B. MacDonald

DAN JOYCE
WILLIAM K. HAAS
MISSOURI PUBLIC SERVICE
COMMISSION
P.O. BOX 360
JEFFERSON CITY, MO 65102

MICHAEL F. DANDINO
OFFICE OF THE PUBLIC COUNSEL
P.O. BOX 7800
JEFFERSON CITY, MO 65102

CRAIG S. JOHNSON
LISA COLE CHASE
ANDERECK EVANS MILNE PEACE &
JOHNSON, L.L.C.
P.O. BOX 1438
JEFFERSON CITY, MO 65201

W.R. ENGLAND, III
PAUL A. BOUDREAU
BRYDON, SWEARENGEN & ENGLAND,
P.C.
P.O. BOX 456
JEFFERSON CITY, MO 65102

STATE OF MISSOURI



Matt Blunt
Secretary of State

CORPORATION DIVISION
CERTIFICATE OF CORPORATE RECORDS

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY

I, MATT BLUNT, Secretary of State of the State of Missouri and Keeper of the Great Seal thereof, do hereby certify that the annexed pages contain a full, true and complete copy of those certain original documents on file and of record in this office for which certification has been requested.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 1st day of MARCH, 2001.

Matt Blunt
Secretary of State



EXHIBIT
1

TEL-011

STATE OF MISSOURI
DEPARTMENT (SEAL) OF STATE,

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, JOHN LISULLIVAN, Secretary of State of the State of Missouri, and Keeper of the Great Seal thereof, hereby certify that the annexed pages contain a full, true and complete copy of:

Articles of Association of THE BELL TELEPHONE COMPANY OF MISSOURI, filed Dec. 3, 1879, and Certificate of Corporate Existence issued Dec. 3, 1879;

Articles of Consolidation of BELL TELEPHONE COMPANY OF MISSOURI and AMERICAN DISTRICT TELEGRAPH COMPANY OF ST. LOUIS, under title, THE BELL TELEPHONE COMPANY OF MISSOURI; filed Feb. 2, 1880;

Affidavit of increase in number of directors from 5 to 11; filed May 15, 1881;

Certificate of Increase of capital stock from \$400,000 to \$2,000,000, filed July 2, 1897;

Certificate of acceptance of provisions of the general laws of Missouri relating to corporations and extending time of corporate existence 100 years from 3rd day of December, 1899, filed November 29, 1899;

Certificate of Increase of capital stock from \$2,000,000 to \$4,000,000, filed March 23, 1901;

Certificate of Increase of capital stock from \$4,000,000 to \$10,000,000, filed May 19, 1904;

Affidavit of Change of Corporate Title to THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY, filed March 23, 1910;

as the same appears on file and of record in this office.

IN TESTIMONY WHEREOF, I hereunto set my hand and

affix the Great Seal of the State of

Missouri. Done at the City of Jefferson,

this Eighth day of March A.D., Nineteen

Hundred and Seventeen.

Secretary of State.

TEL-011

The subscribers hereto being desirous of forming a Corporation for the purpose of constructing owning operating and maintaining lines of telephone & telegraph adopt the following articles of association:

1. This Corporation shall be known as The Bell Telephone Company of Missouri

2. Its Capital stock shall be four hundred thousand (\$400,000) dollars, divided into four thousand (4000) shares of one hundred (\$100) dollars each

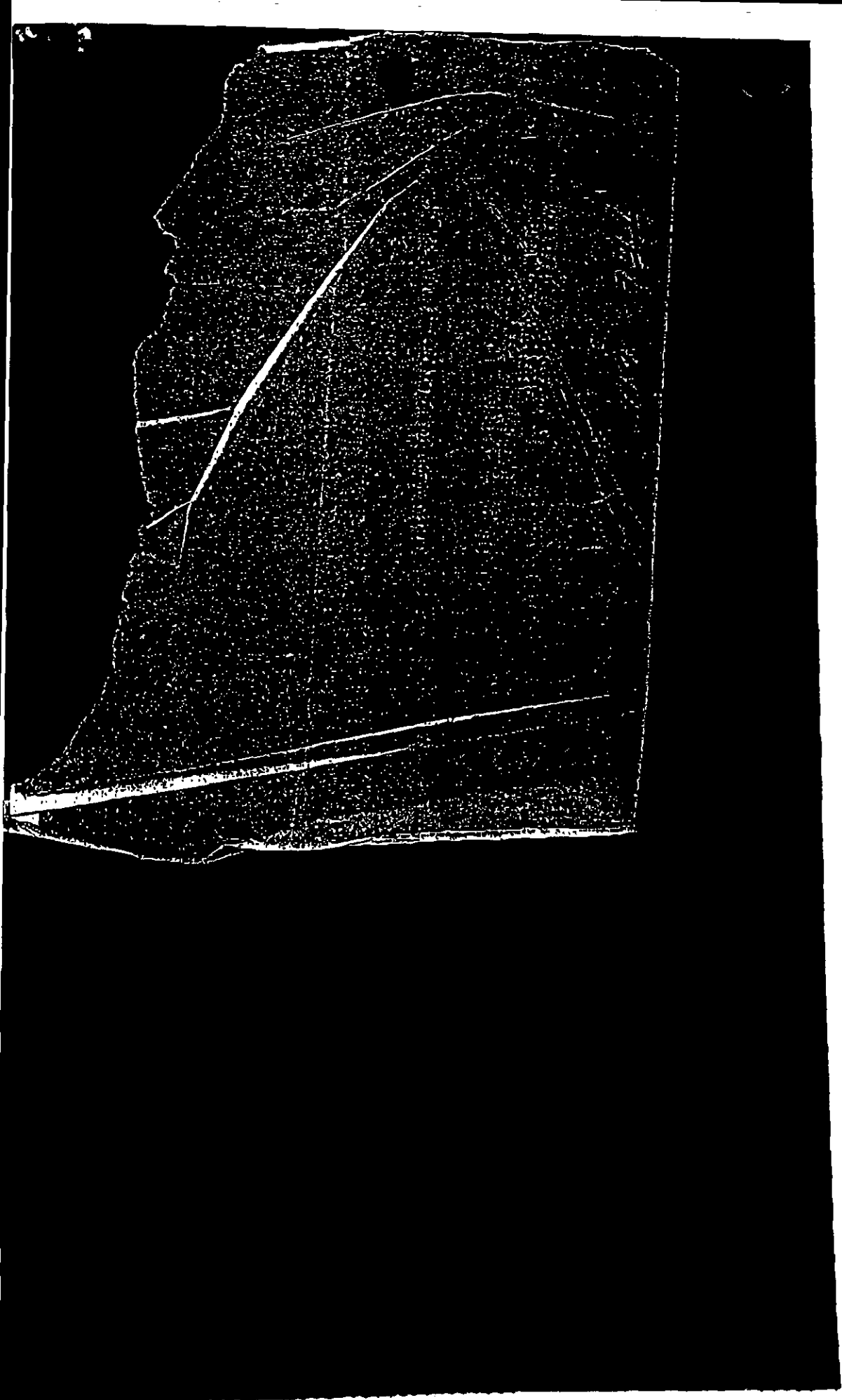
3. The Board of Directors shall consist of five (5) members

4. The subscribers hereto are five (5) in number and their names are Horace H. Eldred, Geo. S. Durant, H. L. Stone, Geo. H. Kent and Edward A. Smith.

5. The number of shares of stock of each subscriber hereto is as follows:

Horace H. Eldred		
Geo. S. Durant	750	shares
Geo. H. Kent	250	shares
H. L. Stone	750	shares
Edward A. Smith	20	shares

6. The principal office or place of business of this Company shall be located in the city of St. Louis



TEL-011

The subscribers hereto being...
tion for the purpose of constructing...
lines of telephone & telegraph here...
Association.

This corporation shall be...
Company of Missouri.

The capital stock shall be...
dollars, divided into four thousand (4000) shares...
dollars each.

The names of the...
names are...
is as follows:

shall be located...
St. Louis, Missouri.

St. Louis, Missouri.

State of Missouri,
City of St. Louis,
our said...
association...

Subscribed & sworn to...
24 day of December 1919

(SEAL)

8. The name of the authorized
TEL-011 agent of the Company at St. Louis
is Geo F Durant.

H. H. Eldred
Geo F. Durant
Geo. H. Kent
of St. Louis
Edw. A. Smith

State of Missouri }
City of St. Louis, } ss

We Howard H. Eldred, George F. Durant
and Edward A. Smith on our oath
state that the facts set forth in
the ~~...~~
are true.

Geo F. Durant
H. H. Eldred
Edw. A. Smith

Subscribed and sworn to before me in the City
of St. Louis this 20 day of December 1911

Mayor Public
City of St. Louis

Articles of Association
The Bell Telephone
Company of Missouri

Cap \$400,000
St. Louis

ES

Article page 14
Regulation Company

1000 shares
100.000000
100.000000 / 1.50

and certificates
State of Missouri

1911
Secretary of State

TEL-011

KNOW ALL MEN BY THESE PRESENTS;

THAT WE THE UNDERSIGNED HEREBY ASSOCIATE OURSELVES FOR THE PURPOSE OF FORMING A CORPORATION UNDER THE PROVISIONS OF ARTICLE V, CHAPTER 21, OF THE REVISED STATUTES OF THE STATE OF MISSOURI.

THE NAME OF THIS CORPORATION SHALL BE "THE MISSOURI AND KANSAS

THE CAPITAL STOCK OF THE COMPANY SHALL BE ONE MILLION DOLLARS, DIVIDED INTO TEN THOUSAND SHARES OF ONE HUNDRED DOLLARS EACH, THE SAME HAS BEEN BONA FIDE SUBSCRIBED.

THIRD - THE BUSINESS OF THE CORPORATION SHALL BE MANAGED BY A BOARD OF SEVEN DIRECTORS, AND THE LOCATION OF THE PRINCIPAL OFFICE OR PLACE OF BUSINESS OF SAID COMPANY SHALL BE AT KANSAS CITY, JACKSON COUNTY MISSOURI.

FOURTH - THE NUMBER AND NAMES OF THE SUBSCRIBERS TO THE STOCK OF

NO. OF SUBSCRIBERS.	NO. OF SHARES.
1. E T GILLILAND.	9815.
2. JOHN R MULVAIN.	20.
3. W H INGLE.	40.
4. GEORGE R PECH.	20.
5. C D CRANDALL.	20.
6. E L SMITH.	40.
7. GEORGE L BEETLE.	40.

FIFTH - THE NAMES OF THE AUTHORIZED AGENT OF SAID COMPANY AT KANSAS CITY IS GEORGE L BEETLE.

IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS AND SEALS ON THIS 23RD DAY OF AUGUST 1882.

E. T. Gilliland SEAL
John R. Mulvain SEAL
W. H. Ingle SEAL
George R. Pech SEAL
C. D. Crandall SEAL
E. L. Smith SEAL
George L. Beetle SEAL

STATE OF MISSOURI.

COUNTY OF JACKSON, }

ON THIS DAY PERSONALLY APPEARED BEFORE ME, A
NOTARY PUBLIC WITHIN AND FOR THE COUNTY AND STATE AFORESAID, E T
GILLILAND, GEORGE L BEETLE, AND C. P. Crandall, ALL OF WHOM BEING
BY ME PERSONALLY SWORN UPON THEIR OATHS STATE, THAT THEY ARE SUR-

JORISERS TO THE ABOVE ARTICLES OF ASSOCIATION, AND THAT THE MATTERS
AND THINGS AS THEREIN STATED ARE TRUE. *Geo. L. Beetle*

E. T. Gilliland

C. P. Crandall

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS 23RD DAY OF AUGUST
1882. MY COMMISSION AS NOTARY PUBLIC WILL EXPIRE AUGUST 23RD

1884. *Henry M. Stout*,

NOTARY PUBLIC.

JACKSON COUNTY MISSOURI.

ARTICLE V.

TELEGRAPH AND TELEPHONE COMPANIES.

28 Corporation, by whom and how formed.
 Articles, where filed—when incorporated—powers.
 Election of directors—appointment of officers.
 Who shall not be chosen directors.
 Meeting of board.
 Privileges in constructing lines.
 May enter upon lands, when.
 Exclusive privileges not to be contracted for.
 Power to maintain lines, etc.
 Duties and obligations of company.

Section
 624. Duties in forwarding dispatches over other lines.
 625. Duties of employes.
 626. Penalty for transmitting false communication.
 627. Liability for disclosing contents of dispatch, and for sending messages.
 628. Mode of construction may be directed, by whom.
 629. Destruction of property, misdemeanor.
 630. May consolidate with other companies.
 631. Shall possess what powers.

Sec. 874. Corporation, by whom and how formed.—Any number of persons, not less than five, being subscribers to the stock of any contemplated telephone or magnetic telegraph company, may be formed into a corporation for the purpose of constructing, owning, operating and maintaining lines of telephone or magnetic telegraph, upon complying with the following requirements: Whenever stock to the amount of not less than twenty thousand dollars shall have been subscribed for the purpose of forming a telegraph company, or five thousand dollars for the purpose of forming a telephone company, the subscribers to such stock shall elect from among themselves such number of directors, not less than three nor more than thirteen, as they may determine, and shall severally subscribe articles of association which shall set forth the name of the corporation, the amount of the capital stock of the company, the number of directors, the amount of each share of stock, the number and names of the subscribers to the stock of the company, and the number of shares of stock taken by each subscriber, the location of the principal office or place of business of the company, and the names of its authorized agents thereat, which shall be verified by the affidavit of at least three of the subscribers thereto, and shall pay into the state treasury fifty dollars for the first fifty thousand dollars or less of its capital stock, and the further sum of five dollars for every additional ten thousand dollars thereof. (G. S. 348, § 1, amended.)

Sec. 875. Articles, where filed—when incorporated—powers.—The articles of association shall be filed in the office of secretary of state, who shall record and carefully preserve the same in his office, and thereupon the subscribers and the persons who, from time to time, shall become stockholders in such company, and their successors, shall be a body politic and corporate, by the name stated in such articles of association, and shall have power to construct, own, operate and maintain lines of telephone and magnetic telegraph between such points as they may, from time to time, determine, and to make such reasonable charges for the use of the same as they may establish; and shall have power to lease or attach to their lines other telephone or telegraph lines by lease or purchase; and meetings of the stockholders or of the directors of such corporation may be held for the transaction of business as well without as within this state. A copy of the articles of association, certified by the secretary of state or his deputy, under the seal of the state, shall be prima facie evidence of the incorporation of such company, and of the facts stated therein. Any such company, through its board of directors, with the consent of the persons holding the larger amount in value of the stock, shall have power to reduce its capital stock to any amount not below the actual cost of construction, and in like manner and with like consent to increase the capital stock from time to time, as in their judgment may be necessary, not exceeding an amount, which, when fully paid up, shall be required for the business of the company, which consent shall be obtained in the manner prescribed by law. (G. S. 348, § 2, amended.)

SEC. 876. *Election of directors—appointment of officers.*—There shall be an annual election of directors to serve for the ensuing year, notice of which, appointing a time and place, shall be given by the directors chosen, as provided by law, for the first annual election, and thereafter by their successors in office; which notice shall be published not less than twenty days previous thereto in a newspaper published in the county where the principal office of the company shall be situated. The directors shall hold their offices for one year, and until their successors are duly elected and qualified. They shall elect one of their number to be president of the company, and may appoint such other officers and agents as [may] be prescribed by the articles of association or by-laws of the company. (G. S. 348, § 3.)

SEC. 877. *Who shall not be chosen directors.*—No person shall be chosen a director who is not a stockholder owning stock absolutely in his own right and qualified to vote at the election at which he is chosen, and all elections for directors shall conform to the requirements of law governing private corporations. (New section.)

SEC. 878. *Meeting of board.*—The board of directors may at any time meet for the transaction of business, upon a call of the president of the company. (G. S. 349, § 4.)

SEC. 879. *Privileges in constructing line.*—Companies organized under the provisions of this article, for the purpose of constructing and maintaining telephone or magnetic telegraph lines, are authorized to set their poles, piers, abutments, wires and other fixtures, along and across any of the public roads, streets and waters of this state, in such manner as not to incommode the public in the use of such roads, streets and waters. (G. S. 249, § 5, amended.)

SEC. 880. *May enter upon lands, when.*—Such companies are also authorized to enter upon any land, whether owned by private persons in fee or in any less estate, or by any corporation, whether acquired by purchase or by virtue of any provision in the charter of such corporation, for the purpose of making preliminary surveys and examinations with a view to the erection of any telephone or telegraph lines, and, from time to time, to appropriate so much of said lands as may be necessary to erect such poles, piers, abutments, wires and other necessary fixtures for a telephone or magnetic telegraph, and to make such changes of location of any part of said lines as may, from time to time, be deemed necessary, and shall have a right of access to construct said line, and, when erected, from time to time, as may be required, to repair the same; and may proceed to obtain the right of way, and to condemn said lands in the manner provided by law. (G. S. 249, § 6, amended.)

SEC. 881. *Exclusive privileges not to be contracted for.*—No company shall have power to contract with any owner of land for the right to erect or maintain a telephone or telegraph line over his lands, to the exclusion of the lines of other companies organized under the provisions of this article. (G. S. 249, § 7, amended.)

SEC. 882. *Power to maintain lines, etc.*—Any company incorporated as herein provided, may contract, own, use and maintain any line or lines of telephone or magnetic telegraph, whether wholly within or wholly or partly beyond the limits of this state, and shall have power to lease or attach to the line or lines of such company other telephone or telegraph lines, by lease or purchase, and may join with any other corporation or association in constructing, leasing, owning, using or maintaining their line or lines, upon such terms as may be agreed upon between the directors or managers of the respective corporations, and may own and hold any interest in such line or lines, or become lessees thereof, on such terms as the respective corporations may agree. (G. S. 249, § 8, amended.)

SEC. 883. *Duties and obligations of company.*—It shall be the duty of every telephone or telegraph company, incorporated or unincorporated, operating any telephone or telegraphic line in this state, to receive dispatches from and for other telephone or telegraph lines, and from or for

by individual, and on payment or tender of their usual charges for transmitting dispatches, as established by the rules and regulations of such telephone or telegraph line, to transmit the same with impartiality and good faith, under a penalty of one hundred dollars for every neglect or refusal so to do, to be recovered, with costs of suit, by civil action, for the benefit of the person or persons or company sending or desiring to send such dispatch. (G. S. 349, § 9, amended.)

Sec. 884. *Duties in forwarding dispatches over other lines.*—Where the person sending the dispatch desires to have it forwarded over the lines of other telephone or telegraph companies, whose termini are respectively within the limits of the usual delivery of such companies, to the place of final destination, and shall tender to the first company the amount of the usual charges for the dispatch to the place of final delivery, it shall be the duty of the company to receive the same, and, without delaying the dispatch, to pay to the succeeding line the necessary charges for the remaining distance; and it shall be the duty of the succeeding line or lines to accept the same, and forward the dispatch in the same manner as if the person sending the same had applied to the agent or operator of such line or lines in person, and paid to him the usual charges; and for omitting so to do, the company or companies owning or operating such line or lines shall severally be liable to the penalty prescribed in section eight hundred and eighty-three. (G. S. 350, § 10, amended.)

Sec. 885. *Duties of employes.*—In all cases where application is made to any telephone or telegraph company, or the operator, agent, clerk or servant thereof, to send a dispatch, it shall be the duty of such operator, agent, clerk or servant who may receive dispatches at that station, plainly to inform the applicant, and, if required by him, to write upon the dispatch that the line is not in working order, or that the dispatches already on hand for transmission will occupy the time, so that the dispatch offered cannot be transmitted within the time required, if the facts be so; and for omitting so to do, or for intentionally giving false information to the applicant in relation to the time within which the dispatch offered may be sent, such operator, agent, clerk or servant, and the company by which he is employed, shall incur a like penalty as in section eight hundred and eighty-three. (G. S. 350, § 11, amended.)

Sec. 886. *Penalty for transmitting false communication.*—If any officer, manager, agent or operator of any telephone or telegraph line operating in this state, or any other person, shall knowingly transmit by such telephone or telegraph line any false communication or intelligence with intent to injure any one, or to speculate in any article of merchandise, commerce or trade, or with intent that another may do so, or shall knowingly send or deliver any dispatch that is forged or not authorized by the person whose name purports to be signed thereto, shall, on conviction thereof, in the court having criminal jurisdiction in the proper county, be liable to the same penalty as is provided in section eight hundred and eighty-three. (G. S. 350, § 12, amended.)

Sec. 887. *Liability for disclosing contents of dispatch, and for sending messages.*—Every telephone or telegraph company now organized, or which may hereafter be organized, under the laws of this state, shall be liable for special damages occasioned by the failure or negligence of their operators or servants in receiving, copying, transmitting or delivering dispatches; and for the disclosure of any of the contents of any private dispatches to any person other than to him to whom it was addressed, or to his agent, they shall be liable to the sender of the dispatch and to the person to whom it was addressed, in the sum of fifty dollars to each, recoverable by an action before a justice of the peace, and for all special damages in addition thereto. (G. S. 350, § 13, amended.)

Sec. 888. *Modes of construction may be directed by whom.*—The mayor and aldermen, or board of common council of any city, and the trustees of any incorporated town through which the lines of any telephone or telegraph company are to pass, may, by ordinance or otherwise, specify where the

posts, piers or abutments shall be located, the kind of posts that shall be used, the height at which the wires shall be run; and such company shall be governed by the regulations thus prescribed; and after the erection of said telephone or telegraph lines, the said mayor and aldermen, or board of common council, and the trustees of any incorporated town, shall have power to direct any alteration in the location or erection of said posts, piers or abutments, and also in the height at which the wires shall run, having first given such company or its agents opportunity to be heard in regard to such alteration. (G. S. 351, § 14, amended.)

Sec. 889. *Destruction of property misdemeanor.*—Any person who shall unlawfully and intentionally injure, molest or destroy any of the lines, posts, piers, abutments, or other material or property pertaining to any line of telephone or magnetic telegraph erected in this state, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, at the discretion of the court having cognizance thereof. (G. S. 351, § 15, amended.)

Sec. 890. *May consolidate with other companies.*—Any telegraph company now organized, or which may hereafter be organized, under the laws of this state, may at any regular meeting of the stockholders thereof, by vote of persons holding a majority of the shares of the stock of such company, unite or consolidate with any other company or companies now organized, or which may hereafter be organized, under the laws of the United States, or of any state or territory, by consent of the company with which it may consolidate or unite, and such consolidated company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Missouri on companies separately organized under the provisions of this article, and be subject to the same liabilities. (G. S. 351, § 16, amended.)

Sec. 891. *Shall possess what powers.*—All corporations formed under this article shall possess all the powers and privileges granted to corporations by article one of this chapter, relating to the general powers of private corporations, and be subject to all the provisions thereof except as herein otherwise provided. (New section.)*

ARTICLE VI.

APPROPRIATION AND VALUATION OF LANDS TAKEN FOR TELEGRAPH, TELEPHONE, GRAVEL AND PLANK OR RAILROAD PURPOSES.

SECTION

892. Lands may be condemned, when—petition, etc.
893. Summons, when to issue, how served—publication, when
894. Appointment of commissioners—duties of.
895. Different owners may be joined in one petition.
896. Clerk to give notice of the filing of the report—report may be reviewed, when.

SECTION

897. Cost, by whom paid.
898. Shall not enter or appropriate dwelling house, etc.
899. Proceedings when properly held by corporation.
900. Lands for depot purposes, how condemned, etc.

Sec. 892. *Lands may be condemned, when—petition, etc.*—In case lands or other property are sought to be appropriated by any road, railroad, telephone, telegraph or other corporation created under the laws of this state, for public use, and such corporation and the owners cannot agree upon the proper compensation to be paid, or in case the owner is incapable of contracting, be unknown, or be a non-resident of the state, such corporation may apply to the circuit court of the county where said land or

*Telegraph companies, whether regarded as common carriers or tollers, may specially limit their liabilities, subject to the qualification that they will not be protected from the consequence of gross negligence. May require messages requested. 37 Mo. 472.

STATE OF MISSOURI

Number  2008

EXHIBIT
3

CERTIFICATE OF CORPORATE EXISTENCE.

Whereas, E. T. Gilliland, George L. Beetle
G. D. Grandall,

and others, have filed in the office of the Secretary of State, Articles of Association or Agreement, in writing, as provided by law, and have, in all respects, complied with the requirements of law governing the formation of Private Corporations for ^{Telegraph and Telephone} ~~Manufacturing and Business~~ purposes.

Now, Therefore, I, MICHAEL K. MCGRATH, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said parties, their associates and successors, have become a body corporate, and duly organized, under the name of "The Missouri and Kansas Telephone Company" and have all the rights and privileges granted to ^{Telegraph and Telephone} ~~Manufacturing and Business~~ Corporations under the laws of this State. And that the amount of the Capital Stock of said Corporation is One Million Dollars.



In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Missouri Done at the City of Jefferson, this Twenty-four day of August - A. D. eighteen hundred and eighty two

Mich. K. McGrath
Secretary of State

KNOW ALL MEN BY THESE PRESENTS;

THAT WE THE UNDERSIGNED HEREBY ASSOCIATE OURSELVES FOR THE PURPOSE OF FORMING A CORPORATION UNDER THE PROVISIONS OF ARTICLE V, CHAPTER 23, OF THE REVISED STATUTES OF THE STATE OF MISSOURI.

THE NAME OF THIS CORPORATION SHALL BE "THE MISSOURI AND KANSAS

THE AMOUNT OF THE CAPITAL STOCK OF THE COMPANY SHALL BE

ONE MILLION DOLLARS, DIVIDED INTO TEN THOUSAND SHARES OF ONE HUNDRED DOLLARS EACH, THE SAME HAS BEEN BONA FIDE SUBSCRIBED,

THIRD - THE BUSINESS OF THE CORPORATION SHALL BE MANAGED BY A BOARD OF SEVEN DIRECTORS, AND THE LOCATION OF THE PRINCIPAL OFFICE OR PLACE OF BUSINESS OF SAID COMPANY SHALL BE AT KANSAS CITY, JACKSON COUNTY MISSOURI.

FOURTH - THE NUMBER AND NAMES OF THE SUBSCRIBERS TO THE STOCK OF

NAME OF SUBSCRIBER	NO. OF SHARES
1. E T GILLILAND.	9815.
2. JOHN R MULVAIN.	25.
3. W H INKLEY.	40.
4. GEORGE R PECK.	20.
5. O D GRANDALL.	20.
6. E L SMITH.	40.
7. GEORGE L BEETLE.	40.

FIFTH - THE NAMES OF THE AUTHORIZED AGENT OF SAID COMPANY AT KANSAS CITY IS GEORGE L BEETLE.

IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS AND SEALS ON

THIS 29TH DAY OF AUGUST 1888.

E. T. Gilliland
John R. Mulvain
W. H. Inkley
SEAL
SEAL
SEAL
SEAL

STATE OF MISSOURI.

COUNTY OF JACKSON.

ON THIS DAY PERSONALLY APPEARED BEFORE ME, A
NOTARY PUBLIC WITHIN AND FOR THE COUNTY AND STATE AFORESAID, E T
GILLILAND, GEORGE L BEETLE, AND C. P. C. *all*, ALL OF WHOM BEING
BY ME PERSONALLY SWORN UPON THEIR OATHS STATE, THAT THEY ARE SUB-
SCRIBERS TO THE ABOVE ARTICLES OF ASSOCIATION, AND THAT THE MATTERS
AND THINGS AS THEREIN STATED ARE TRUE. *Geo. L. Beetle*

E. T. Gilliland

C. P. C. all

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS 23RD DAY OF AUGUST
1882. MY COMMISSION AS NOTARY PUBLIC WILL EXPIRE AUGUST 23RD

1884.

Henry M. Stoutest.

NOTARY PUBLIC,

JACKSON COUNTY MISSOURI.

2008

Articles of Association

of
"The Williams and
Francis Telephone
Company"

Cap \$1,000,000
Kansas City

NR

W. A. Gentry

Corporate Secretary

1000 Main St

St. Louis, Mo

Articles of Association

Filed for Record

10/15/08

No. T00000011

STATE OF MISSOURI



Matt Blunt
Secretary of State


CORPORATION DIVISION

CERTIFICATE OF CORPORATE RECORDS

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY

I, MATT BLUNT, Secretary of State of the State of Missouri and Keeper of the Great Seal thereof, do hereby certify that the annexed pages contain a full, true and complete copy of those certain original documents on file and of record in this office for which certification has been requested.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 1st day of MARCH, 2001.


Secretary of State



EXHIBIT

4

TEL-011

THE ATTORNEY GENERAL OF CHINA

of the
1913

FILED
AND COPY ISSUED

MAR 27 1913

Conradus
S. H. Harris, General
813 New National Bank
of Commerce Bldg

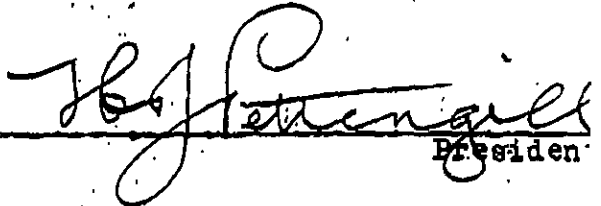
TELEPHONE

STATE of MISSOURI, :

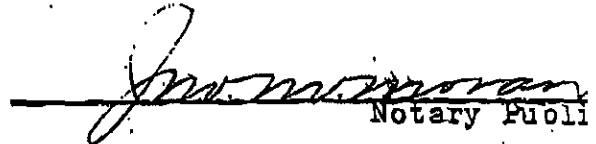
SS.

CITY of ST. LOUIS, :

H. J. Pettengill, President of The Bell Telephone Company of Missouri, a corporation duly organized and existing under and by virtue of the laws of the State of Missouri, personally appeared before me and being duly sworn, upon his oath says, that at a meeting of the stockholders of said corporation duly called and held on the 18th day of February, 1913, the name of said corporation was by unanimous vote of its stockholders, cast as its by-laws direct, changed from The Bell Telephone Company of Missouri to The Southwestern Telegraph and Telephone Company.


President

Subscribed and sworn to before me, a Notary Public within and for the City of St. Louis, this 24th day of February, 1913.


Notary Public

My commission expires October 4th, 1916.

TEL-011

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

I, the undersigned, Recorder of Deeds for said City and State do hereby certify that the foregoing _____ instrument of writing was filed for record in my office on the 27 day of Feb. A. D. 1913 at 4:36 o'clock P. M. and is truly recorded in Book 49 Page 9.

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WITNESS my hand and official seal on the day and year aforesaid.

Clas. F. Jery
Recorder

The Missouri and Kansas Telephone Company
Minutes of Meeting of
Board of Directors

Kansas City, Missouri, December 29, 1926

An adjourned meeting of the Board of Directors of The Missouri and Kansas Telephone Company was held in Room 654, Gated Building, Tenth Street and Grand Avenue, Kansas City, Missouri, on Friday, December 29, 1926, at 11 o'clock, A. M.

Those were present, Messrs. Dawson, Carl, J. W. Glead, John, Law and Pittenger.

The Chairman took the Chair.

Resolved: That the capital stock of this Company shall be and the same is hereby increased from twenty million Dollars (\$20,000,000) to fifty million Dollars (\$50,000,000), said increase of thirty million Dollars (\$30,000,000) being divided into three hundred shares of the face value of One Hundred Dollars each, and that the officers of this Company and they are hereby authorized and directed to take any and all instruments and to take any and legal steps necessary to make this increase legal and effective.

Noted: That the capital stock of this Company shall be and the same is hereby increased from twenty Million Dollars (\$20,000,000) to Fifty Million Dollars (\$50,000,000), said increase of Thirty Million Dollars (\$30,000,000) being divided into 300,000 shares of the par value of One hundred Dollars each, and that the officers of this Company and they are hereby authorized and directed to execute any and all instruments and to take any legal steps necessary to make this increase legal and effective.

Noted: That the name of this Company is hereby changed from The Missouri Telephone Company to Southwestern Bell Telephone Company and that the officers of this Company and they are hereby authorized and directed to execute any and all instruments and to take any steps necessary to make this change of name legal and effective.

Resolved, that the officers of this Company and they are hereby authorized to purchase upon behalf of this Company all of the property of every character and nature belonging to The Southwestern Telegraph and Telephone Company, a Missouri corporation, including in addition to all telephone property of every kind located in the State of Missouri, all stock in any other company and any and every kind of assets, tangible and intangible belonging to said The Southwestern Telegraph and Telephone

Company for the sum of Ten Million Dollars
(\$10,000,000) to be paid in stock of this Company
to be issued under the authority granted by
stockholders of this Company to increase the
capital stock of this Company to Fifty Million
Dollars (\$50,000,000), and the further assumption
by this Company of all the outstanding debts
obligations of the said The Southwestern Telegraph
and Telephone Company, a Missouri corporation
it being understood that the said outstanding
obligations will be not more than \$2,900,000.

Resolved Further, that the officers of this
Company be and they are hereby authorized
and directed to execute any and all instruments
make all necessary book entries, and obtain
necessary consents from the state and municipalities
authorized, and to do any and every thing else
necessary to make the purchase of said property
effective.

Resolved that the officers of this Company
be and they are hereby authorized and directed
to purchase from the stockholders of the
said Pioneer Telephone and Telegraph Company,
a corporation organized and doing business
under the laws of the State of Oklahoma,
all the share of stock in the said Pioneer
Telephone and Telegraph Company being

necessary to be made from the state and manner
authorized and to do any and every thing that
may be necessary to make the purchase of said property
effected
Resolved, that the officers of this company
be and they are hereby authorized and directed
to purchase from the stockholders of the
General Telephone and Telegraph Company,
a corporation organized and doing business
under the laws of the State of Oklahoma,
of the share of stock in the said General
Telephone and Telegraph Company, being
the total sum of \$500,000, at par and to pay
thereof the sum of \$750,000 of the stock of
this company to be raised under authority
granted by the stockholders of this company
to increase the capital stock from twenty
million dollars (\$20,000,000) to fifty million
dollars (\$50,000,000)
Resolved, further, that the officers of the
company be and they are hereby authorized
and directed to take all legal steps necessary
to make the purchase of the said stock
effective, and their resolution hereunto
Resolved, that the officers of this company
be and they are hereby authorized to make
before the stockholders of this company all of the
property of every character and nature

corporation, located in the State of Arkansas, belonging
to the Southwestern Telegraph and Telephone Company
as New York corporation, including in addition to
all telephone property of every kind belonging to
the Southwestern Telegraph and Telephone Company
New York corporation, located in the State of
Arkansas, all stock in any other companies and
any and every other kind of assets, tangible and
intangible, belonging to said the Southwestern
Telegraph and Telephone Company within the
State of Arkansas, for a term, still to extend the
million Dollars (\$1,000,000) to be agreed upon by
and between the officers of the respective corporations
and upon when or arrangements to be made with
a note of this Company payable on or before and
upon after date, with interest at 6% per annum
from date until paid, said property to be con-
veyed to this Company free of all liens, claims
and demands whatsoever.

Accepted, verified, that the officers of this
Company be and they are hereby authorized and
directed to execute any and all instruments and
to take any and every legal step necessary to
make said conveyance of this property from

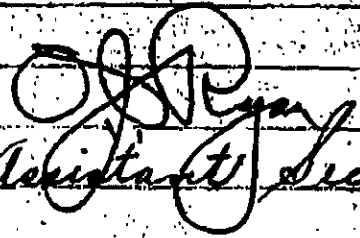
Arkansas, all stock in any other companies and any and every other kind of assets, tangible and intangible, belonging to said The Southwestern Telegraph and Telephone Company within the State of Arkansas, for a sum, not to exceed Six millions Dollars (\$6,000,000) to be agreed upon by and between the officers of the respective corporations said sum when so ascertained to be paid with a note of this Company payable on or before one year after date, with interest at 6% per annum from date until paid, said property to be conveyed to this Company free of all liens, claims and demands whatsoever.

Resolved, Further, that the officers of this Company be and they are hereby authorized and directed to execute any and all instruments and to take any and every legal step necessary to make said purchase of the said property from The Southwestern Telegraph and Telephone Company a New York corporation, effective.

Adjourned.

A true record.

Attest:


Assistant Secretary

AFFIDAVIT OF CHANGE OF NAME.

EXHIBIT
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STATE OF MISSOURI,
CITY OF ST. LOUIS,

Mr. H. J. Pettengill, President of The Missouri and Kansas Telephone Company, a corporation duly incorporated under the laws of the State of Missouri, being duly sworn upon his oath states that at a meeting of the stockholders of said corporation duly called and held on the 29th day of December, 1916 the name of said corporation was by a vote of its stockholders cast as its by-laws direct changed from The Missouri and Kansas Telephone Company to Southwestern Bell Telephone Company.

H. J. Pettengill
President.

Subscribed and sworn to before me, a Notary Public within and for the City of St. Louis, State of Missouri, this 2nd day of January, 1917.

above written.



J. J. Bowman
Notary Public.

My commission expires the 3rd day of October

1920.
Filed for record and duly recorded in my office on this 3rd day of
Jan 20 1917, at 9:00' clock 32 minutes a.m.
By J. R. [Signature] Recorder
[Signature] Deputy