

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
December 30, 1998**

**CASE NO: TO-98-115**

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

Sincerely,



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

**Uncertified Copy:**

**Mark Witcher**  
AT&T Communications  
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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 30th  
day of December, 1998.

In the Matter of AT&T Communications of the                    )  
Southwest, Inc.'s Petition for Second Compulsory            )  
Arbitration Pursuant to Section 252(b) of the                ) Case No. TO-98-115  
Telecommunications Act of 1996 to Establish an                )  
Interconnection Agreement with Southwestern Bell            )  
Telephone Company.   )

**ORDER DENYING MOTION TO STRIKE,**  
**DENYING MOTION TO SUPPLEMENT THE RECORD,**  
**AND ESTABLISHING BRIEFING SCHEDULE**

The Missouri Public Service Commission issued, on July 24, 1998, an Order Establishing Procedural Schedule for Setting Permanent Rates, which established an evidentiary hearing date of September 4, 1998. This order noted that the Arbitration Order, issued December 23, 1997, specified that the parties would have an opportunity to file comments on the rates and the costing model proposed by the Arbitration Advisory Staff (AAS) and to support their positions with affidavits and schedules. The Commission also indicated that it would hold a hearing for the sole purpose of providing the Commissioners with an opportunity to ask questions of the parties, the AAS and the Office of the Public Counsel (OPC). The Order noted that there would be no opportunity for cross-examination by the parties, but that the parties would be permitted to file briefs following the hearing.

At the hearing on September 4, Southwestern Bell Telephone Company (SWBT) offered a Motion to Strike and in the Alternative to Supplement the Record. SWBT indicates that it understood that the parties were to confine their presentations to only the cost being determined in this matter and were not to retry global cost issues addressed by the initial report of the AAS. According to SWBT, AT&T now seeks to retry issues previously resolved by the Commission instead of addressing the particular issues raised by the AAS Report. SWBT states that although it believes the Commission erroneously decided many issues in the prior arbitration orders, it did not re-raise those issues because to the extent they have been appealed, they are no longer within the Commission's jurisdiction.

SWBT details four issues raised by AT&T which SWBT believes were previously decided and should not be retried at this time. SWBT indicates that these issues pertain to SWBT's overall cost study practices, labor rates and maintenance factors, common costs, and utilization factors. SWBT also states that if it has misinterpreted the Commission's intent and that matters previously raised and decided in the prior arbitration phases are "fair game," that it requests the opportunity to respond to AT&T's issues, and to raise its objections to the "global modifications" previously imposed by the Commission. However, if SWBT is correct and AT&T has gone beyond the intended scope, SWBT believes AT&T's testimony on previously decided issues must be stricken.

On September 14, 1998, AT&T filed its Reply to Southwestern Bell Telephone Company's Motion to Strike and in the Alternative to Supplement

the Record. AT&T notes that the AAS Report is not SWBT's testimony and that the Commission's procedure in this arbitration permits each party to respond to what the AAS has concluded in its report; the procedure does not entitle SWBT to a further response. AT&T requests that the Commission deny SWBT's motion to strike in its entirety. AT&T also requests, with the exception of allowing the complete direct testimony of Dr. Dale Lehman in Kansas Docket Number 97-SCCC-149-GIT to be entered into the record as requested by SWBT and conditionally agreed to by AT&T at the hearing, that the Commission deny SWBT's motion to supplement the record and to cross-examine Mr. Flappan on these issues. AT&T alleges that SWBT's motion to supplement the record exceeds the scope of the procedural schedule prescribed in the Commission's July 24 order in this case.

SWBT filed its Response to AT&T's Reply to Motion to Strike on September 22, 1998. SWBT's response argues that the only issue before the Commission at this time is SWBT's motion to strike portions of the testimonies of Mr. Rhinehart as being "beyond the scope of the proceeding" and Mr. Flappan as being "irrelevant and without a proper foundation." SWBT states that AT&T's response attempts to introduce new information regarding Mr. Flappan's qualifications which cannot now be cross-examined, and SWBT reiterates its argument that Mr. Flappan is not qualified as an expert witness on SWBT Operational Support Systems (OSSs).

On December 9, 1998, SWBT filed a Motion to Establish Briefing Schedule, requesting that the Commission establish the following briefing schedule:

Simultaneous Initial Briefs            -            January 6, 1999

Simultaneous Reply Briefs            -            January 25, 1999

AT&T filed a Response to Southwestern Bell Telephone Company's Motion to Establish Briefing Schedule on December 18, 1998. AT&T requested that the Commission deny SWBT's motion and instead schedule initial briefs to be due thirty (30) days after the Commission issues an order regarding SWBT's Motion to Strike, as previously proposed. On December 24, 1998, SWBT filed a reply to AT&T's comments, in which it urges the Commission to issue an order setting an expeditious briefing schedule.

The Commission has reviewed SWBT's Motion to Strike and in the Alternative to Supplement the Record, AT&T's reply, SWBT's response to AT&T's reply, the December 23, 1997, Report and Order, the Order Establishing Procedural Schedule issued July 24, 1998, SWBT's Motion to Establish Briefing Schedule, AT&T's response and SWBT's reply, along with the other pleadings and orders in this case. The procedure set by the Commission in the December 23, 1997, Report and Order allowed each party to file comments on the rates and the costing model proposed by the AAS and to support its position with affidavits and schedules. This order indicated that the Commission would then hold a hearing for the sole purpose of providing the Commissioners with an opportunity to ask questions of the parties, the AAS and OPC. The order specified that there would be no opportunity for cross-examination by the parties, but

that the Commission would permit the filing of briefs following the hearing. The parties have been afforded an equal opportunity to respond to the AAS report. In making its final determination in this case, the Commission will give all the evidence presented the weight it is due. The Commission finds that the Motion to Strike and in the Alternative to Supplement the Record should be denied. The Commission also finds that deadlines should now be established for the filing of briefs.

**IT IS THEREFORE ORDERED:**

1. That Southwestern Bell Telephone Company's Motion to Strike and in the Alternative to Supplement the Record is denied.
2. That simultaneous initial briefs shall be due on February 1, 1999.
3. That simultaneous reply briefs shall be due on February 15, 1999.
4. That this order shall become effective on January 12, 1999.

**BY THE COMMISSION**



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

( S E A L )

Lumpe, Ch., Drainer and Murray,  
CC., concur.  
Schemenauer, C., not participating.  
Crumpton, C., absent.

Ruth, Regulatory Law Judge

ALJ/Sec'y:

Ruth Pope

12-30  
Date Circulated

TO-98-115  
CASE NO.

[Signature]  
Lumpe, Chair

[Signature] abs  
Crumpton, Commissioner

[Signature]  
Murray, Commissioner

NP  
Schemenauer, Commissioner

[Signature]  
Drainer, Vice-Chair

12-30  
Agenda Date

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 30th day of December, 1998.

Dale Hardy Roberts

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

