



Missouri Public Service Commission

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November 15, 2001

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Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. TO-2002-185

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF RECOMMENDATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

William K. Haas
Deputy General Counsel
(573) 751-7510
(573) 751-9285 (Fax)

WKH:sw
Enclosure
cc: Counsel of Record

FILED²

NOV 15 2001

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

NOV 15 2001

Missouri Public
Service Commission

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

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation states:

1. On October 12, 2001, Southwestern Bell Telephone Company, Southwestern Bell Texas, Inc., and Southwestern Bell Telephone L.P., d/b/a Southwestern Bell Telephone Company filed a "Joint Application" requesting approval of a "corporate restructuring." Under the proposed restructuring, Southwestern Bell Telephone Company (a Missouri incorporated regulated telecommunications company) would merge with Southwestern Bell Texas, Inc. (a Texas corporation) with Southwestern Bell Texas, Inc. as the surviving corporation. Southwestern Bell Texas, Inc., would convert into a Texas limited partnership with the name Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company. The Joint Applicants filed a motion for expedited treatment requesting the Commission to approve the Joint Application no later than December 20, 2001, which is the planned effective date of the conversion.

2. The "not detrimental to the public interest" standard is applicable to this transaction. See, *State ex rel. City of St. Louis v. Public Serv. Comm'n*, 73 S.W.2d 393 (Mo.

banc 1934); *State ex rel. Fee Fee Trunk Sewer Co., Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. 1980); 4 CSR 240-2.060(8)(D).

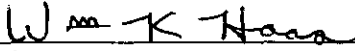
3. It appears that because Southwestern Bell Telephone Company's predecessors were incorporated before the establishment of the Commission that it may assign its right to conduct a telecommunications business in Missouri without a requirement that its successor first obtain a certificate of service authority. See, *State ex rel. Wabash Ry. Co. v. Roach*, 184 S.W. 969 (Mo. 1916).

4. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Commission approve the Joint Application.

WHEREFORE, the Staff recommends that the Commission approve the Joint Application and order Southwestern Bell Telephone, L.P., to make a name change filing pursuant to 4 CSR 240-2.060(16) within 30 days after the effective date of the Commission's Order.

Respectfully submitted,

DANA K. JOYCE
General Counsel



William K. Haas
Deputy General Counsel
Missouri Bar No. 28701

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 15th day of November 2001.

Wm K Haas

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. TO-2002-185
Southwestern Bell Telephone Company, Southwestern Bell Texas, Inc. and
Southwestern Bell Telephone L.P.

FROM: Sherri Murphy, Telecommunications Department *BV*
David G. Winter, Project Coordinator/Accounting Department *DGW*


Project Coordinator/Date *11/15/2001*

Wm K Tolson *11/15/01*
General's Counsel Office/Date

SUBJECT: Staff's Recommendation concerning authority to transfer property and ownership
of stock pursuant to Section 392.300, RSMo.

DATE: November 15, 2001

On October 12, 2001, Southwestern Bell Telephone Company, ("SWBT"), Southwestern Bell Texas, Inc., ("SWBT Texas") and Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT, L.P.") filed a Joint Application pursuant to Section 392.300 RSMo, 4 CSR 240-2.060(1) and 4 CSR 240-2.60(8) seeking approval from the Missouri Public Service Commission to convert SWBT, through a series of transactions, from a Missouri corporation to a Texas limited partnership. The application was docketed as Case No. TM-2002-185.

Detriment to the Public Interest Standard

Staff utilized the "detriment to the public interest" standard, as it is similar in acquisition cases as well as merger cases. If the Joint Applicants fail to show that the proposed corporate restructuring is not detrimental to the public interest in Missouri (i.e., if it is demonstrated that the Missouri public will be harmed by the proposed restructuring plan), then the Commission should reject this application and not approve the proposed restructuring. Staff Counsel has advised that the "not detrimental to the public interest" standard is based on case law generally cited in court opinions such as State ex rel. City of St. Louis v. Public Serv. Comm'n, 73 S.W.2d 393 (Mo. banc 1934); State ex rel. Fee Fee Trunk Sewer Co., Inc. v. Litz, 596 S.W.2d 466 (Mo. App. 1980). Staff Counsel also advises that the Commission has incorporated the "not detrimental to the public interest" standard in its rules. 4 CSR 240-2.060(8)(D).

Consistent with Staff's position in other acquisition, merger and restructuring cases, Staff views the members of the "public" that are to be protected as those consumers taking and receiving utility service from SWBT in the State of Missouri.

In this case, Staff would define "public interest" as referring to the nature and level of the impact or effect that SWBT's restructuring will have on its Missouri customers. There is a fundamental concern in the regulation of public utilities that the public being served will not be impacted adversely or harmed by those responsible for providing monopoly services. Telecommunications companies in Missouri are charged with providing adequate facilities at just and reasonable rates. If this restructuring results in adverse or negative impacts to SWBT's Missouri customers, then the Commission should not approve the Joint Applicants' Application or, in the alternative, impose conditions sufficient to overcome the detriments of the restructuring.

CERTIFICATE OF SERVICE AUTHORITY

Staff Counsel has advised that because SWBT's predecessors were incorporated before the establishment of the Commission that SWBT may assign its right to conduct a telecommunications business in Missouri. In other words, SWBT, L.P. need not apply for a certificate of service authority to complete this transaction. However, SWBT's right of assignment is not absolute. The assignment is subject to review under the "not detrimental to the public interest" standard discussed above.

In Staff's opinion, the assignment of SWBT's right to SWBT, L.P. is not detrimental to the public. SWBT, L.P., as the successor in interest to SWBT, will be an "incumbent local exchange company"¹ and will be subject to the same regulation as SWBT. In addition, the assignment of rights is not detrimental because SWBT's customers will continue to receive the same services at the same rates from the same employees over the same facilities.

RESTRUCTURING

SWBT is a price cap telecommunications company pursuant to Section 392.245, RSMo and provides telecommunications service to approximately 2,700,000 customers through 166 exchanges located throughout the state of Missouri. Through a series of complex transactions, the Joint Applicants propose to convert SWBT from a Missouri corporation to a Texas limited partnership. Upon conversion, SWBT, L.P. will be classified as a "foreign"² limited partnership in the State of Missouri. The purpose of this conversion is to achieve an overall tax savings.

¹ Section 386.020(22) RSMo 2000. "Incumbent local exchange telecommunications" means a local exchange telecommunications authorized to provide basic local telecommunications service in a specific geographic area as of December 31, 1995, or a successor in interest to such a company.

² Section 359.011(4) RSMo 2000. "Foreign limited partnership" means a partnership formed under the laws of any country or of any state other than this State and having as partners one or more general partners and one or more limited partners.

TAX IMPLICATIONS

The Accounting Staff has reviewed the Joint Application regarding what impact, if any, SWBT's restructuring proposal would have upon the "tax revenues of the political subdivisions in which any structures, facilities, or equipment of the companies involved in such disposition are located."³ Further, the Accounting Staff reviewed the federal and state tax implications of this transaction.

SWBT has represented to the Accounting Staff that the principal rationale for this complex series of transactions is to substantially reduce SWBT's Texas franchise tax liability. Further, SWBT has represented that this series of restructuring transactions will have no adverse tax consequences for the State of Missouri or its municipalities and political subdivisions.

The Accounting Department agrees with SWBT's representations concerning the tax consequences of SWBT's restructuring plan. Upon conversion to SWBT, L.P., the character of the assets will not change (i.e. cost, title, right to its uses, transferable, etc.) nor will the tax liabilities for those assets change. Thus, the business organization that SWBT has chosen will not affect the "tax revenues of the political subdivisions in which any structures, facilities, or equipment of the companies involved in such disposition are located."

The Joint Applicants on page 3 of the Joint Application state that:

...SWBT, L.P. will elect to be treated as an association taxable as a corporation for federal income tax purposes by filing Form 8832, Entity Classification Election within seventy-five (75) days of the conversion, to be effective as of the date of the conversion.

SWBT, L.P.'s election provides that SWBT, L.P. will be classified as a corporation for federal income tax purposes therefore subject to the corporate tax. This is **no change** from SWBT's current federal tax classification.

The federal income classification of an entity flows through for state income tax purposes. Thus, SWBT, L.P. will be classified and taxed as a corporation in the State of Missouri for income tax purposes. Again, there will be **no change** from SWBT's current Missouri income tax classification.

³ Section 392.300, RSMo 2000.

PRICE CAP REGULATION

SWBT is a price cap regulated telecommunications company as provided by Section 392.245, RSMo 2000. Section 392.245 provides that:

1. The commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation. As used in this chapter, **"price cap regulation" shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, which maximum allowable prices shall not be subject to increase except as otherwise provided in this section.**

2. **A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area.** A small incumbent local exchange telecommunications company may elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the small incumbent company's service area, and the incumbent company shall remain subject to regulation under this section after such election.
(Emphasis Added)

As noted above "price cap regulation" is dependent on "a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area." Price cap regulation is not dependent upon the type of organizational structure of the company. Therefore, it is Staff's belief that SWBT's organizational restructuring will not affect SWBT's nor its successor's, SWBT, L.P., price cap status in the State of Missouri.

TARIFF ISSUES

The Telecommunications Department Staff has reviewed the Joint Application for an order authorizing SWBT to transfer property and ownership of stock pursuant to Section 392.300, RSMo. The Telecommunications Department Staff recommends that the Commission order SWBT, L.P. to file pursuant to 4 CSR 240-2.060(16), an adoption notice and revised tariff title sheet for each of SWBT's tariffs on file and evidence of registration of the SWBT, L.P. name

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OFFICIAL CASE FILE MEMORANDUM
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with the Missouri Secretary of State. The filing should be made within 30 days after the effective date of the Commission's Order.

RECOMMENDATION

The Staff recommends that the Commission approve the Joint Application with the following provisions:

1. Approve the Joint Application permitting Corporate Restructuring;
2. Require SWBT, L.P. to make a name change filing for each of SWBT's tariffs on file. This filing should be made within 30 days after the effective date of the Commission's Order.

**Service List for
Case No. TO-2002-185
Revised: November 15, 2001 (SW)**

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