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September 15, 1997

FILED

SEP 15 1997

MISSOURI
PUBLIC SERVICE COMMISSION

Mr. Cecil I. Wright
Executive Secretary
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

Re: Case No. TO-98-21

Dear Mr. Wright:

Enclosed for filing with the Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Reply To Oppositions To Motion To Dismiss.

Please stamp "Filed" on the extra copy and return the copy to me in the enclosed self-addressed, stamped envelope.

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

Very truly yours,

Leo J. Bub
by TM

Leo J. Bub

Enclosure

cc: Attorneys of Record

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

FILED

SEP 15 1997

**MISSOURI
PUBLIC SERVICE COMMISSION**

Southwestern Bell Telephone Company's SS7)
Agreements with ALLTEL, Ameritech and GTE.) Case No. TO-98-21

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY TO OPPOSITIONS TO MOTION TO DISMISS**

Southwestern Bell Telephone Company respectfully submits this Reply to the oppositions to its Motion to Dismiss which were filed by MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. and the Staff of the Missouri Public Service Commission.

This docket was established as a result of Southwestern Bell's filing of its agreements to provide Common Channel Signaling and Signaling System 7 (SS7) services to ALLTEL Missouri, Inc., Ameritech, and GTE Midwest, Inc. Southwestern Bell provided these agreements to the Commission to comply with the Federal Communication Commission's Order which required them to be filed by June 30, 1997. This requirement, however, was struck down by the 8th Circuit Court of Appeals as beyond the FCC's jurisdiction.

On August 25, 1997, the Commission closed this docket because no issue was presented for Commission determination as submitted. In its letter advising of this docket's closing, it indicated that the 8th Circuit's decision created a new uncertainty by leaving the Commission with the decision of which preexisting agreements must be approved and no independent decision has been taken in Missouri on this issue. Even if the Commission did not close this case, a party should also be permitted to voluntarily dismiss a proceeding it initiated.

Southwestern Bell did not originally ask the Commission to approve these three SS7 agreements, and it does not believe such approval is necessary now. As Commission Staff has

correctly pointed out, the Commission has traditionally not required such agreements to be filed with it. Rather, the Commission has permitted carriers to work out intercarrier agreements themselves and to come to it only when there is a problem. There is no reason for the Commission to depart from this prior practice.

In addition, there is nothing in the Telecommunications Act of 1996 which requires state Commission approval of these agreements. Section 252(a)(1) provides that interconnection agreements, whether negotiated before or after the date of enactment of the 1996 Act, are to be submitted to the state Commission for approval under Section 252(e). The requirement of Section 252(a)(1) is triggered only by "a request for interconnection, services, or network elements pursuant to Section 251." (emphasis supplied). Section 252(a)(1) of the Act was thus intended to be limited to interconnection negotiations under the Act. It was not intended to encompass the myriad of agreements between incumbent local exchange telephone companies. The agreements between and among incumbent LECs are not subject to filing with or approval by the Commission since they were not executed pursuant to Section 251 of the 1996 Act.

Moreover, there is no requirement to file these agreements for approval because they are not agreements between competing carriers. Section 251(c) concerns the requirements for interconnection from competing providers of local exchange services. Congress clearly recognized that authorization of local exchange competition requires the existence of interconnection agreements between the incumbent and new entrants serving a territory, and gave the state commissions the duty to review and approve these interconnection agreements.

The Act's legislative history provides further support that Section 251 applies to interconnection between competing providers of local exchange services. The Joint Explanatory

Statement of the Committee of Conference (Joint Statement) states that "(t)he conference agreement adopts a new model for interconnection that incorporates provisions from both the Senate bill and House amendment in a new Section 251 of the Communications Act." (Joint Statement at 121). According to the House Amendment as discussed in the Joint Statement:

Section 242(a)(1) [the House precursor to Section 251] sets out the specific requirements of openness and accessibility that apply to LECs as competitors enter the local market and seek access to, and interconnection with, the incumbent's network facilities.

and

Section 241(b)(1) describes the specific terms and conditions for interconnection, compensation, and equal access, which are integral to a competing provider seeking to offer local telephone services over its own facilities. (emphasis added.)

Section 252(a)(1) was thus intended to require Commission approval of interconnection agreements between competing local exchange telephone companies. The FCC reached this same conclusion when it stated that Section 251(c)(2) would require that only arrangements between competing carriers would be included.¹ The SS7 agreements Southwestern Bell filed are not interconnection agreements between competing local exchange telephone companies. There is therefore no requirement under the Act for them to be filed for state commission approval.

Even though these SS7 agreements are not interconnection agreements under the Act, Southwestern Bell is willing to provide these same services under the same terms and conditions to any similarly situated carrier, including MCI. In fact, these services are, and have been

¹In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-96, p. 60 (Released April 19, 1996).

available to interexchange carriers like MCI under tariff. The SS7 agreements were intended to contain the same rates as Southwestern Bell's SS7 tariff (e.g., the agreements were revised July 1, 1997 to reflect a recent tariff increase). Since these services are equally available at the same rates to MCI, its concern about the potential for discrimination is therefore misplaced.

WHEREFORE, Southwestern Bell respectfully requests the Commission to determine that review of these three SS7 agreements is unnecessary and dismiss this case.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY

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CERTIFICATE OF SERVICE

Copies of the foregoing document were served on the following parties by first-class, postage prepaid, U.S. Mail on September 15, 1997.

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