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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Petition of Southwestern Bell)
Telephone Company for a)
Determination that it is Subject)
to Price Cap Regulation Under)
Section 392.245 RSMo (1996).)

CASE NO. TO-97-397

ORDER GRANTING INTERVENTIONS, GRANTING PROTECTIVE
ORDER, AND MODIFYING PROCEDURAL SCHEDULE

Southwestern Bell Telephone Company (SWBT) filed a petition for a determination that it is subject to price cap regulation on March 21, 1997. On April 18, 1997, the Missouri Public Service Commission (Commission) issued an Order Giving Notice, Granting Intervention, and Establishing Procedural Schedule. The order granted intervention to MCI Telecommunications Corporation (MCI), set an intervention deadline of May 2, and set a procedural schedule which requires rebuttal testimony to be filed by May 23. A number of pleadings have been filed in this case. The Commission will address the requests for interventions, SWBT's motion for a protective order, and the Office of the Public Counsel's (Public Counsel's) request for a modification of the procedural schedule in this order. The Motion to Stay Proceeding filed by MCI Telecommunications Corporation and a motion seeking access to surveillance reports filed by the Attorney General on behalf of the State of Missouri will be addressed in a separate order.

The following entities timely filed applications to intervene:

The State of Missouri (State)
MCImetro Access Transmission Services, Inc. (MCImetro)
United Telephone Company of Missouri d/b/a Sprint
(Sprint/United)

AT&T Communications of the Southwest, Inc. (AT&T)
GTE Midwest Incorporated (GTE)
Sprint Communications Company L.P. (Sprint)
Birch Telecom of Missouri, Inc. (Birch)
Kansas City Fiber Network, L.P. (KC Fiber)
COMPTel-MO¹

Sprint/United and GTE essentially both state that they are local exchange carriers (LECs) and as such have an interest in the process used by the Commission to determine whether a LEC is subject to price cap regulation.

Birch and KC Fiber state that they are certificated to provide interexchange and private line services, and either have or have pending a certificate to provide basic local telecommunication service. Birch and KC Fiber claim that their financial and business interests are at stake in this proceeding, and that no other entity presently a party to this proceeding will sufficiently represent their interests.

Sprint L.P. states that it is authorized to provide interexchange as well as local exchange telecommunications service in the state of Missouri, and as such its interest as a purchaser of access services and as a provider of intraexchange services will be affected by the Commission's decision, and that no other party to this proceeding will adequately protect Sprint's interests. Sprint also states that its intervention will be in the public interest because it can bring to this proceeding its expertise and experience as a telecommunications provider.

COMPTel-MO states that its members are interexchange telecommunications companies whose interests as purchasers of access services and providers of long distance services will be affected by the Commission's decision. COMPTel-MO also submits that its appearance in this

¹ COMPTel-MO is a Missouri not-for-profit corporation comprised of the following members: CGI, Consolidated Network, Inc., Dial U.S., LDD, Inc., LDDS WorldCom, and Valu-Line of St. Joseph, Inc.

proceeding will be in the public interest because of its expertise in the telecommunications industry.

MCImetro indicates that it is a provider of interexchange and local exchange telecommunication services, and as such the Commission's decision in this case will affect MCImetro's interest as a purchaser of access services and as a provider of intrastate services, and that these interests are different than those of the general public. In addition, MCImetro reiterates the arguments made by MCI in its application to intervene filed on March 31, including the contention that the price cap statute does not prohibit the Commission from proceeding with the complaint filed against SWBT in Case No. TC-97-303.

AT&T states that it is authorized to provide interexchange, local exchange, and basic local exchange service in portions of Missouri, and that as a competitive interexchange company and prospective provider of local exchange telecommunications services, it has an interest which is different from that of the general public. Further, AT&T states that its intervention in this proceeding is in the public interest because of its expertise in the telecommunications industry. In addition, AT&T indicates that it opposes SWBT's petition for the same reasons as set forth in MCI's application to intervene filed on March 31.

The State maintains that it and its constituent agencies, departments, and institutions are major customers of SWBT, and that it has a definite interest in rates charged for local basic telecommunication service and the existence of effective competition which affects its daily operation. The State asks that the Commission hold a full evidentiary

hearing pursuant to Section 392.245.5, RSMo Supp. 1996², and find that no effective competition exists. The State claims that technological advances reduce costs, and without effective competition price cap regulation allows the incumbent provider to maximize its profit margins at the expense of the state and other similarly-situated consumers, and thus suggests that rate base/rate of return regulation will afford customers the most likely chance of being able to purchase service at fair rates. In addition, the State maintains that there is insufficient information currently available to identify individual issues that may arise in this case which may affect the State's interests, and consequently the State reserves the right to take a position and participate with regard to any matter or issue arising in this case which may affect the State's interests.

SWBT filed a pleading in opposition to the State's application to intervene, alleging that the State's intervention request seeks to unlawfully expand the scope of the determination to be made by the Commission under Section 392.245.2. SWBT contends that the State has borrowed the "effective competition" legal standard from a different section of the statute, Section 392.245.5, which relates to the applicability of competitive status to a large incumbent LEC. SWBT adds that if the legislature intended the Commission to utilize an "effective competition" standard when making the initial determination that SWBT is subject to price cap regulation, it could have done so by using the same language found in Subsection 5 of Section 392.245.

The Commission finds that all of the applicants have substantially complied with 4 CSR 240-2.075. Applicants are either

² All statutory references are to the 1996 Supplement of the Missouri Revised Statutes, unless otherwise noted.

companies which provide telecommunication services in the state of Missouri, and thus are potential purchasers of access services from SWBT, or, in the case of the State, a large customer of SWBT. SWBT filed an objection to the intervention of only one of the applicants, the State. The objection was based on a concern that the State would attempt to unlawfully expand the scope of the proceeding. The Commission has control over its own dockets, and has already delineated the scope of this proceeding in its order issued on April 18, 1997. Consequently, this concern does not provide a sound basis for denying the State's intervention request. The Commission finds that it would serve the public interest to allow all of the applicants to intervene in this proceeding.

On May 7, SWBT filed a motion for a protective order, stating that it anticipates that some highly confidential data may need to be included in discovery or in testimony. SWBT requests that the Commission issue its standard protective order.

The Commission determines that the motion of SWBT is reasonable and will grant the protective order as set forth in attachment A and incorporated herein by reference. The Commission has in the past granted protective orders in other cases, and has found that such orders help to minimize discovery disputes. Issuance of a protective order should facilitate the proceedings in this case.

On May 6, the Office of the Public Counsel filed suggestions in support of MCI's motion to stay proceedings. As part of its pleading, Public Counsel notes that the Commission's expedited schedule does not allow 20 days between the filing of SWBT's direct testimony on May 9 and the filing of rebuttal testimony on May 23, thus depriving Public Counsel and other parties of a fair opportunity to propound data requests based upon SWBT's filed testimony, and incorporate the responses to data requests

into the rebuttal testimony. While Public Counsel supports MCI's Motion to Stay Proceeding, Public Counsel requests in the alternative that the Commission modify the procedural schedule to allow additional time between the filing of direct testimony, the filing of rebuttal testimony, and the hearing.

On May 9, SWBT filed a response to Public Counsel's suggestions in support of MCI's motion to stay proceedings. SWBT contends that it has provided the full factual underpinnings of its request for price cap regulation in its petition, and that if Public Counsel needs to conduct discovery, it is well aware of SWBT's position and is capable of propounding discovery requests based upon the limited issues the Commission has set for hearing. Indeed, SWBT notes that Public Counsel has already submitted data requests to SWBT.

The Commission finds that Public Counsel has raised a valid concern about whether the current procedural schedule allows adequate time for Public Counsel and the intervenors to conduct discovery prior to the filing deadline for rebuttal testimony. Therefore, the Commission will modify the procedural schedule as follows:

Staff, Public Counsel and intervenors file rebuttal testimony	June 9, 1997 3:00 p.m.
Southwestern Bell Telephone Company files surrebuttal testimony/all other parties file cross-surrebuttal testimony	June 23, 1997 3:00 p.m.
Prehearing Conference and Hearing	June 30, 1997 10:00 a.m.

This should allow sufficient time for discovery on the limited issues presented by Section 392.245.2. In addition, SWBT's response time may be shortened if necessary.

IT IS THEREFORE ORDERED:

1. That the following entities are granted intervention in this proceeding:

The State of Missouri,
MCImetro Access Transmission Services, Inc.,
United Telephone Company of Missouri d/b/a Sprint,
AT&T Communications of the Southwest, Inc.,
GTE Midwest Incorporated,
Sprint Communications Company L.P.,
Birch Telecom of Missouri, Inc.,
Kansas City Fiber Network, L.P.,
COMPTel-MO.

2. That Southwestern Bell Telephone Company's motion for protective order is granted.

3. That the protective order set forth in Attachment A to this order is hereby adopted for use in this case and incorporated herein by reference.

4. That the request filed by the Office of the Public Counsel to modify the procedural schedule in this proceeding is hereby granted.

5. That the procedural schedule in this proceeding is modified as follows:

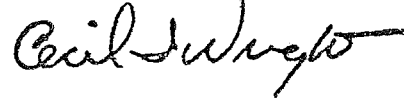
Staff, Public Counsel and intervenors file rebuttal testimony	June 9, 1997 3:00 p.m.
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Southwestern Bell Telephone Company files surrebuttal testimony/all other parties file cross-surrebuttal testimony	June 23, 1997 3:00 p.m.
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Prehearing Conference and Hearing	June 30, 1997 10:00 a.m.
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6. That this order shall become effective on the date hereof.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Cecil I. Wright", with a long horizontal flourish extending to the right.

Cecil I. Wright
Executive Secretary

(S E A L)

Elaine E. Bensavage, Administrative Law
Judge, by delegation of authority pursuant
to 4 CSR 240-2.120(1) (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 20th day of May, 1997.