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FILED

FEB 16 1999

Missouri Public
Service Commission

February 16, 1999

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, MO 65101

Re: Case No. TO-99-227

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case are an original and fourteen (14) copies of Southwestern Bell Telephone Company's Reply to the Office of Public Counsel and State of Missouri Position Statement Regarding Hearing Procedure and Proposals A and B.

Also enclosed is an additional copy to be file stamped and returned to us in the enclosed self-addressed, stamped envelope.

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

Sincerely,

A handwritten signature in black ink, appearing to read "K. Swaller", with a long, sweeping horizontal line extending to the right.

Enclosures

cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

FEB 16 1999

Missouri Public
Service Commission

In the Matter of the Application of Southwestern)
Bell Telephone Company to Provide Notice of)
Intent to File an Application for Authorization to) Case No. TO-99-227
Provide In-Region InterLATA Services)
originating in Missouri Pursuant to Section 271)
of the Telecommunications Act of 1996.)

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY TO THE OFFICE OF PUBLIC COUNSEL
AND STATE OF MISSOURI POSITION STATEMENT
REGARDING HEARING PROCEDURE AND PROPOSALS A AND B**

COMES NOW Southwestern Bell Telephone Company (SWBT) and for its Reply to the Office of Public Counsel (OPC) and State of Missouri's (Attorney General) Position Statement Regarding Hearing Procedure states as follows:

HEARING PROCEDURE

In their Statement OPC and the Attorney General complain that the nine (9) days set aside for hearings will not allow time for sufficient cross examination and that the importance of this case merits an unlimited time for hearings.

SWBT agrees that this case is important, but the function of this case must be put into proper perspective. The sole purpose of this case is to provide the Commission with the information necessary to allow it to make a recommendation to the FCC. It is the FCC that has the jurisdiction and responsibility to rule upon SWBT's request for authority to compete with the interexchange carriers in the Missouri long distance market. This is not a contested case in the meaning of the Administrative Procedure Act¹ (Chapter 536 RSMo 1994) and therefore

¹ Defined as "a proceeding before an agency in which legal rights, duties or privileges of specific Parties are required by law to be determined after hearing." 536.010(2) RSMo 1994

87.

contested case procedures are not required. That is not to say that SWBT does not recognize the benefit of full and fair cross examination, but rather believes that the need to complete the proceeding in an expeditious manner in order to allow this Commission to provide timely input to the FCC outweigh the benefits of unlimited cross examination.

OPC previously complained about the time constraints of the hearing. See OPC's Motion to Modify Procedural Schedule, December 15, 1998. The Commission responded to that and other similar motions by revising the original procedural schedule to provide substantially more time to OPC and other intervenors to evaluate SWBT's filing. OPC did not renew its objection after the revised schedule was issued. Similarly, OPC and the Attorney General sat with the other Parties through lengthy discussions of the schedule of witnesses and hearing format issues during the two day prehearing without objecting until the eleventh hour.

In their Statement, OPC and the Attorney General then argues the other extreme — if this is not a contested case then the Commission should throw all procedural confines away and collect every piece of information, relevant or not, into the record. Such extremes positions: unlimited cross examination, on the one hand and a complete suspension of rules of evidence on the other hand, serve no purpose other than to prevent the Commission from gathering the information it needs in a timely fashion so that it can meaningfully participate in the FCC proceeding. Staff, SWBT and SWBT's new competitors are confident that the alternative hearing procedures proposed by the Parties will accomplish that purpose.

REPLY TO COMMENTS ON PROPOSALS A AND B

OPC and the Attorney General also filed a separate pleading to express their view on the two alternative schedules of witnesses developed by the Parties at the prehearing. OPC and the Attorney General argue that Proposal B is the lesser of two evils because it would keep the

discussion of all issues together. OPC and the Attorney General assume that the Commission will be present for each panel presentation throughout each of the nine (9) days of hearings therefore entire issues will be heard at the same time and conveniently located in one easy-to-find place in the transcript. First, it is unlikely that the panels will run precisely back-to-back with no overlap since, in order to keep the hearing moving and still accommodate the Commission's need to conduct other business over that nine (9) day period, some panels will be up and down when the Commission is not present and need to be recalled so that the Commission can query the witnesses. Additionally, OPC and the Attorney General fail to recognize how incredibly intertwined all of the issues are in this case. Even if the Commission were present for all 63 (sixty-three) or so hours of the hearing, witnesses will address issues not precisely within their panel because of the nature of the issues. It is impossible to discuss any issues without touching upon performance criteria and in many cases on OSS, public interest and Track A issues as well. The convenience of the Parties in preparing their briefs is not reason enough to establish a particular procedural schedule. In any event, the transcript will include an index to aid the Parties in preparing their briefs.

OPC also argues that they should be given unlimited cross examination, rather than included in the intervenor group. OPC has chosen to firmly align itself with the Parties opposed to Southwestern Bell's entry into long distance and should not be given special cross examination status. The effect of OPC's request would be to give the Parties opposing Southwestern Bell's application considerably more (even unlimited) time than Southwestern Bell to cross examine opposing witnesses, while Southwestern Bell, who has the burden of proof, would be limited to the time frames identified in the two proposals. That would be patently

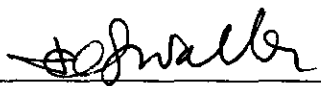
unfair. Further, it would preclude completion of the hearing in the time frames allowed and would prevent the Parties from firmly scheduling their witnesses.

Finally, OPC asks that the record be supplemented in light of the recent Supreme Court opinion interpreting the Act. Southwestern Bell's position on that request is set forth in its Response to AT&T's Motion to Require Briefing and Allow for Supplemental Testimony which will be filed separately on Tuesday, February 16, 1999.

WHEREFORE SWBT urges the Commission to preserve the procedural schedule as it currently stands and to adopt the schedule of witnesses A, as identified in Staff's February 10, 1999 filing. In the alternative, SWBT supports proposed schedule of witnesses B over the open ended proposal of OPC and the Attorney General.

Respectfully submitted,

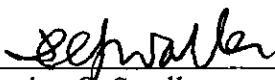
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by first-class postage prepaid, U.S. Mail on February 16, 1999.



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