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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 4th
day of September, 1997.

In the Matter of TCG St. Louis for)
Arbitration Pursuant to § 252(b) of)
the Telecommunications Act of 1996)
to Establish an Interconnection)
Agreement with Southwestern Bell)
Telephone Company.)

CASE NO. TO-98-14

ORDER REGARDING JURISDICTION AND STATUS OF CASE

On July 11, 1997, TCG St. Louis (TCG) and Southwestern Bell Telephone Company (SWBT) filed a Petition for Arbitration to Establish an Interconnection Agreement. The Petition states that SWBT and TCG mutually agreed to a date of February 3, 1997 as the start date for purposes of requesting interconnection under the Telecommunications Act of 1996 (the Act). The Petition filed by TCG and SWBT in Case No. TO-97-21 shows that February 8, 1996 is the actual date upon which TCG served a request for negotiation of an interconnection agreement upon SWBT.

The Act provides "During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a state commission to arbitrate any open issues."¹ In a recent decision the Eighth Circuit Court of Appeals stated: "the parties' ability to request the arbitration of an agreement is confined to the period from the 135th to the 160th day after

¹ See 47 U.S.C. §252(b)(1).

the requesting carrier submits its request to the incumbent LEC."² The Act does not provide for parties to agree to a "start date" for purposes of requesting interconnection. In essence, TCG and SWBT have attempted to cause this Commission to have jurisdiction by Agreement. The Public Service Commission is a creature of statute and can only exercise such powers as are expressly conferred on it, the limits of which are clearly defined.³ Therefore, it is clear that this Commission does not have jurisdiction to arbitrate whatever open issues relating to an interconnection agreement remain between TCG and SWBT under the Act.

However, this Commission supports the policy behind the Act which is to encourage competition in the telecommunications industry. Therefore, the Commission will consider processing this as a request for arbitration under Section 386.230, RSMo 1994, if that is the desire of the parties.

Since this case does not come before the Missouri Public Service Commission under the Act and the time lines of the Act do not apply, the Commission shall cancel the evidentiary hearing previously scheduled to convene on September 17.

IT IS THEREFORE ORDERED:

1. That the parties shall file a pleading as to how they propose to proceed no later than September 11, 1997. This pleading should address whether the parties wish to proceed under Section 386.230, RSMo

² Iowa Utilities Board v. Federal Communications Commission, et al, Case No. 96-3321, p. 21, Submitted January 17, 1997; filed July 18, 1997 (8th Fed. Cir.).

³ State ex rel. United Rys. Co. of St. Louis v. Public Service Commission of Missouri, 192 S.W. 958; State ex rel. Missouri, K & T. Ry. Co. v. Public Service Commission of Missouri, 210 S.W. 386.

1994 and, if they do wish to proceed under 386.230, the parties should include a proposed procedural schedule.

2. That the evidentiary hearing previously scheduled to convene on September 17 is canceled.

3. That this order shall become effective on September 4, 1997.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Cecil I. Wright", with a stylized flourish at the end.

**Cecil I. Wright
Executive Secretary**

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur.

ALJ: Luckenbill