



## Missouri Public Service Commission

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December 17, 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

**FILED<sup>3</sup>**  
DEC 17 2001

Missouri Public  
Service Commission

**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 the **SUPPLEMENTAL BRIEF OF STAFF**.

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*

William K. Haas  
Deputy General Counsel  
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WKH:sw  
Enclosure  
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

DEC 17 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

SUPPLEMENTAL BRIEF OF STAFF

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

On December 13, 2001, the Commission issued an Order Granting Intervention And Directing Filing which directs the parties to brief three questions.

1. Whether there is any different oversight over SBC's ability to sell or otherwise dispose of the assets of SWBT the Missouri corporation compared to its ability to sell or otherwise dispose of the assets of SWBT as a Texas limited partnership?

No. Southwestern Bell Telephone Company (SWBT) is currently a wholly-owned subsidiary of SBC Communications, Inc. (SBC). (Joint Application, p. 1). Following the proposed transaction, SBC would be the ultimate parent of both Southwestern Bell Texas Holdings, Inc. and SWBT Texas, L.L.C. Southwestern Bell Texas Holdings, Inc. and SWBT Texas, L.L.C. would be the limited partner and the general partner, respectively, in the regulated telecommunications company, Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company. (Joint Application, pp. 2-3).

A shareholder – even one who holds all the shares – does not have legal ownership of the corporation property. *Penn v. Penn*, 655 S.W.2d 631, 632-33 (Mo. App. W.D. 1983). Both before and after the proposed transaction, § 392.300.1 RSMo 2000 requires the telecommunications company to obtain Commission approval prior to selling or otherwise disposing of the whole or any part of franchise, facilities or system, necessary or useful in the performance of its duties to the public.

2. Whether there is any different oversight over the ability of SWBT the Missouri corporation to sell or otherwise dispose of its assets compared to the ability of SWBT as a Texas limited partnership to sell or otherwise of its assets?

No. As noted, § 392.300.1 RSMo requires the telecommunications company to obtain prior approval before selling or otherwise disposing of the described assets. Section 386.020(51) RSMo 2000, which defines “telecommunications company,” recognizes that a telecommunications company may be a corporation, a partnership, or other business entity.

3. Whether there is any different oversight over SBC’s ability to sell or otherwise dispose of SWBT the Missouri corporation compared to its ability to sell or otherwise dispose of SWBT as a Texas limited partnership?

Yes. Section 392.300.2 RSMo 2000, which requires Commission approval for a stock corporation to purchase more than ten percent of the total capital stock issued by a telecommunications company organized or existing under or by virtue of the laws of this state, would not be applicable to Southwestern Bell Telephone, L.P., a foreign partnership.

Respectfully submitted,

DANA K. JOYCE  
General Counsel



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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 17<sup>th</sup> day of December, 2001.



**Service List for  
Case No. TO-2002-185  
Revised: December 17, 2001 (SW)**

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