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November 1, 1999

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Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65101

FILED

NOV - 1 1999

Re: Case No. AX-2000-114

Missouri Public  
Service Commission

Dear Judge Roberts:

Attached for filing with the Commission is the original and fifteen (15) copies of AT&T Communications of the Southwest, Inc.'s Comments in the above referenced matter.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

AT&T COMMUNICATIONS OF THE  
SOUTHWEST, INC.

By:

A handwritten signature in cursive script, appearing to read "Kevin K. Zarling".  
Kevin K. Zarling

Attachment

cc: Office of Public Counsel  
General Counsel

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

**FILED**  
NOV - 1 1999  
Missouri Public  
Service Commission

In the Matter of Proposed Rules to Update     )  
the Rules of Practice and Procedure            )     Case No. AX-2000-114

**COMMENTS OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.**

**4 CSR 240-2.070 Complaints**

AT&T recommends the Commission adopt additional rules that provide for expedited complaint resolution. As the local exchange market becomes more competitive and companies become increasingly interconnected or rely on other carriers to provide necessary network elements and services, the likelihood for inter-company disputes increases. In many cases, the nature of these disputes will become increasingly customer affecting. AT&T recommends the Commission adopt rules that provide for expedited complaint resolution so that these customer-affecting issues can be resolved expeditiously.

**SUMMARY OF AT&T'S PROPOSED EXPEDITED COMPLAINT  
RESOLUTION RULES**

AT&T is proposing rules that provide for expedited dispute resolution. The proposed process is intended to only be used for disputes that directly affect the ability of a party to provide uninterrupted service to its customers or preclude the provisioning of any service, functionality, or network element. Upon receipt of a request for expedited dispute resolution the Commission would decide if the dispute warranted an expedited ruling based upon the subject matter of the complaint, the complexity of the issues, and other information as deemed relevant. The process proposed by AT&T provides an

opportunity for a response to the complaint and for a hearing if the Commission determines that a hearing is necessary. The proposed process provides for a complete adjudication of the disputed issues while providing for a full and fair opportunity to be heard and a satisfaction of parties' rights to due process.

### **NEED FOR ADDITIONAL RULES**

Historically, many of the formal complaints made to the Public Service Commission involved disputes over rates or over general quality of service issues. Generally, these disputes did not involve service outages to telecommunications subscribers or otherwise create an immediate detriment to customers and service providers while the dispute was resolved. As the telecommunications market moves towards more competition and companies become increasingly interconnected or rely on other carriers to provide necessary network elements and services, the likelihood for inter-company disputes increases. These complaints will most likely involve more customer-affecting issues such as customer service provisioning delays, blocked calls, complete service outages, unlawful PIC freezes or inadequate procedures for removing PIC freezes, among others. These types of complaints involve issues that directly impact a customer's ability to obtain and receive uninterrupted telecommunications service and make the customer suffer while the dispute is resolved.

In addition to negatively impacting customers, these types of disputes, if left unresolved for a lengthy period of time, can represent a serious and damaging business impediment to competitive market entrants. A process that results in the quick resolution of customer affecting disputes will do much to stimulate the growth of competition for telecommunications services.

## **BENEFITS OF AN EXPEDITED DISPUTE RESOLUTION PROCESS**

An expedited dispute resolution process will provide prompt resolution of carrier-related, customer affecting disputes. It will provide for full and effective presentation of each party's case in a hearing-type proceeding. This should afford market participants some measure of the certainty that is necessary to effectively pursue their business strategies and allocate their capital investment. Companies should also be better able to avoid the pursuit of multiple and expensive strategic alternatives to account for the uncertainty that can accompany unresolved, pending disputes. Rather than put business plans and investment decisions on hold pending resolution of a lengthy dispute or engage in business practices to "hedge their bets," companies will be able to quickly resolve the dispute and make business decisions according to the outcome.

An expedited complaint process will minimize the opportunity for carriers to engage in anti-competitive practices because the lawfulness of those practices will be subject to an expedited review. Similarly, the existence of an expedited dispute resolution process and the likelihood that it will be used, if necessary, may sufficiently change the dynamics in competitor negotiations and interaction that those seeking to enforce their rights under the federal Telecommunications Act of 1996<sup>1</sup> (the "Act") will obtain better results without actually resorting to the formal complaint process.

A process that results in quick resolution of disputes is likely to lead to a more efficient implementation of the Telecommunications Act of 1996. Rather than accept a compromise solution that is less advantageous than required by the Act in order to avoid the expense, uncertainty, and delay accompanying the current formal complaint process,

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<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (*codified as amended in scattered sections of 15 and 47 U.S.C.*).

a company may use the expedited process to receive the relief the Act required. For example, rather than pursue a lengthy complaint, a new entrant may accept interconnection at less than parity as required by the Act because of the time, resources, and expense involved in a lengthy dispute resolution. This hinders the development of competition and leads to higher prices and few choices for consumers.

Some parties cite the decision by a company to accept sub-standard interconnection as a business decision and allege that it is not the role of regulatory agencies to intervene in these types business decisions. Such an argument is completely misplaced. The decision to accept sub-standard interconnection is business decision that is frequently required to be made because of the barriers and costs associated with a lengthy dispute resolution process. The "unnecessary intervention" in such a case is made "necessary" by the existence of barriers and costs that are result from a lengthy resolution process. Generally, parties promoting this line of reasoning are parties that are trying to maintain the status quo. Any delay in the resolution of disputes works to the benefits of those parties supporting the current state of affairs to the detriment of a party seeking to have its rights determined and enforced.

This type of complaint process could also benefit the party against whom the complaint is filed. Such an expedited process should provide a vehicle for quick absolution from spurious allegations. For example, performance measures are being developed in Case No. TO-99-227, as Commissioner Crumpton noted, precisely to address the merits of "a number of charges, very serious charges have been leveled against your company in regards to this application"<sup>2</sup>. However, even performance

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<sup>2</sup> Case No. TO-99-227, In the Matter of the Applications of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-Region InterLATA Services

measures may not be sufficient insofar as the potential exists for parties to argue of the validity performance measurement statistics and reporting. Consequently, like performance measures, expedited complaint resolution is a tool that benefits the respondent and the complainant, but it is also a necessary adjunct to performance measures. Other parties seeking approval for a merger or other Commission approval should also benefit as well as by having a vehicle to quickly dispose of separately docketed complaints that might otherwise adversely affect their chances for approval.

### **PROPOSED RULE**

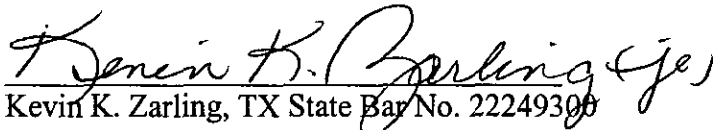
#### **(13) Request for Expedited Ruling.**

- (a) **Purpose.** This section establishes procedures pursuant to which a party who files a complaint to initiate a dispute resolution under this subchapter may request an expedited ruling when the dispute directly affects the ability of a party to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality, or network element. The arbitrator has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. Except as specifically provided in this section, the provisions and procedures of 4 CSR 240-2.070 of this title (relating to Formal Complaints) apply.
- (b) **Filing a request.** Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed pursuant to 4 CSR 240-2.070(3). The complaint shall be entitled "Complaint and Request for Expedited Ruling." In addition to the requirements listed in 4 CSR 240-2.070(5), the complaint shall also state the specific circumstances that make the dispute eligible for an expedited ruling.
- (c) **Response to complaint.** The respondent shall file a response to the complaint within five business days after the filing of the complaint. In addition to the requirements listed in 4 CSR 240-2.070(5), the respondent shall state its

position on the request for an expedited ruling. The respondent shall serve a copy of the response on the complainant by hand-delivery or facsimile on the same day as it is filed with the commission.

- (d) **Hearing.** After reviewing the complaint and the response, the arbitrator will determine whether the complaint warrants an expedited ruling. If so, the arbitrator shall make arrangements for the hearing, which shall commence no later than 20 days after the filing of the complaint. The arbitrator shall notify the parties, not less than three business days before the hearing of the date, time, and location of the hearing. If the arbitrator determines that the complaint is not eligible for an expedited ruling, the arbitrator shall so notify the parties within five days of the filing of the response.
- (e) **Decision point list (DPL) and witness list.** The arbitrator may require the parties to file a DPL on or before the commencement of the hearing. The arbitrator shall require the parties to file their DPL under the same deadline. The DPL shall identify all issues to be addressed, the witness, if any, who will be addressing each issue, and a short synopsis of each witness's position on each issue.
- (f) **Decision.** The arbitrator shall issue a written decision on the complaint within 10 days after the close of the hearing. On the day of the issuance, the arbitrator shall notify the parties by facsimile that the decision has been issued.

Respectfully submitted,



Kevin K. Zarling, TX State Bar No. 22249300

AT&T COMMUNICATIONS

OF THE SOUTHWEST, INC.

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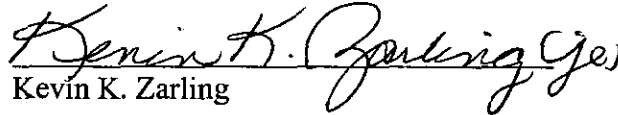
512-370-2010

512-370-2096 (FAX)

**ATTORNEY FOR  
AT&T COMMUNICATIONS  
OF THE SOUTHWEST, INC.**

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsels of record as shown on the attached service list this 1<sup>st</sup> day of November, 1999.

  
Kevin K. Zarling

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