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December 15, 1998

Mr. Dale Hardy Roberts
Secretary
Missouri Public Service Commission
301 W. High Street, Room 530
Jefferson City, MO 65102

FILED
DEC 15 1998
Missouri Public
Service Commission

RE: TO-99-227

Dear Mr. Roberts:

Enclosed for filing with the Commission is an original and 14 copies of :

**OFFICE OF THE PUBLIC COUNSEL'S
MOTION TO MODIFY PROCEDURAL SCHEDULE**

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

Very truly yours,

Michael F. Dandino
Senior Public Counsel

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

DEC 15 1998

Missouri Public
Service Commission

Application of Southwestern Bell Telephone)
Company to Provide Notice of Intent to)
File an Application for Authorization)
To Provide In-Region InterLata Service)
Originating in Missouri Pursuant to Section)
271 of the Telecommunications Act of)
1996)

Case No TO-99-227

**OFFICE OF THE PUBLIC COUNSEL'S
MOTION TO MODIFY PROCEDURAL
SCHEDULE**

COMES NOW the Office of the Public Counsel and respectfully moves the Public Service Commission of the State of Missouri to modify the procedural schedule adopted in its Order of December 9, 1998 for the following reasons:

1. Because of the importance of this case for the future of telecommunications competition, Public Counsel believes that the procedural schedule needs to be modified to a more reasonable, realistic and practical schedule. This case is probably the most important case to come before this Commission in telecommunications in the State of Missouri since the adopting of the Federal Telecommunications Act of 1996 and Senate Bill 507. This case will determine whether the Federal Telecommunications Act and Senate Bill 507 will succeed to bring competition and benefits to the consumer. This case will be the cornerstone for the telecommunications future for consumers, for interexchange service providers, for competitive local exchange companies and incumbent telephone companies, as well as for Southwestern Bell Telephone Company. This case may well decide whether the largest incumbent

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LEC in the state and one of the largest RBOCs in the nation and one of the largest global telecommunications companies in the world will overwhelm and dominate the state telecommunications market or whether SWBT will be pushed to open up its network to give parity in access to its competitors and allow effective local choice to consumers.

This case has national implications; the whole telecommunications world will be watching to see what Missouri does on this application. The industry and regulators in all the states will be following the process and reviewing the evidence generated in Missouri for its impact on the other Section 271 applications that may be filed in other states. The FCC and the U.S. Department of Justice are looking to Missouri to establish a detailed and comprehensive record to serve as the basis for their statutory review under the Federal Telecommunications Act, Section 271.

SWBT's Section 271 application is too important to place on a fast track procedural schedule that unduly restricts the ability of the PSC's Staff, the Office of the Public Counsel, and other parties to review and respond to the more than three feet of direct testimony filed by SWBT. The prefiled testimony (direct, rebuttal, and surrebuttal) is the evidentiary platform for each case that comes before this Commission; the cross examination by the Commission and the parties stems from this prefiled testimony. It is in the interests of the Commission and all parties to the proceeding to have a full and adequate prefiled testimonial record as the foundation of the Commission's record here. It is in the interests of justice and fairness to allow the parties adequate time and ability to (1) conduct sufficient discovery from SWBT and other parties (2) review and analyze the direct testimony and accompanying data and (3) draft

and file their rebuttal testimony based upon that direct, data requests, and other relevant sources.

2. The date for filing rebuttal testimony is especially unreasonable not only in light of the importance of the case, but also in the practical ability of the parties to have a full, fair and reasonable opportunity to respond. Although SWBT did not serve its application and supporting testimony in accordance with this Commission's express order in TO-97-56, the Commission appears ready to forgive and waive that noncompliance. With December 2, 1998 certified by SWBT as the date it said that it completed service on all the case parties, December 2nd was apparently designated as the starting point. From this date the parties have at the most 23 business days (excluding the date of filing) to review SWBT's application, draft brief and the extensive technical direct testimony of 21 SWBT witnesses, including a video tape exhibit. This direct testimony can be stacked about three feet high. Some parties joined by the Order will have even less time.

This time frame for rebuttal would be unreasonable under the normal circumstances of a typical telecommunications case. This case is far from a typical case and has much broader implications for the consumer and the industry than a tariff case, CLEC application case or other cases. SWBT has had all the time it deemed necessary to prepare its direct testimony filed with the application. It controlled the timing of the filing of its direct to its advantage and gave itself adequate time to make the prefiled testimonial record it desired. Now the other parties have only one chance to make a full and proper prefiled record, but are compelled to compress all their time and resources into 23 working days. Seven of those days had passed by the time the Commission set the procedural schedule.

The Commission did not address any special discovery process as proposed by AT&T so the standard 20 day response time under Commission rules is in effect in this case. That does not allow sufficient time to obtain responses and incorporate responses into testimony as needed. Fundamental principles of fair play call for a more realistic and reasonable procedural schedule.

3. The Commission notes in its Order that it agrees with Public Counsel that it is not bound by a 120 day period to hear and issue a decision in this case. With this in mind, the Commission should not try to wedge an important, complex and multiparty proceeding into this 120 day time compressed period. To do so only gives validity to a time limitation and infringes on its power and ability to conduct a full and complete and detailed evidentiary record for use in its decision and for use by the FCC in its final determination on the application.

4. As a practical matter, SWBT will not file its application to the FCC until this Commission has completed its review. That is the history of not only SWBT's prior applications, but has also been the history of all other RBOC Section 271 applications to the FCC. The final decision on SWBT's Texas application has not been made even though the application was filed on March 2, 1998. The review process is still on-going. *PUC Project No. 16251*. SWBT has not filed its Texas application to the FCC.

The application in Kansas was filed on February 17, 1998; SWBT was directed by the Kansas Corporation Commission to file its state application at least 90 days before it intended to file with the FCC. Kansas did not attempt to limit its investigation by that 90 day period. The Kansas hearing was not held until June 2, 1998.

Its interim report that SWBT did not meet Section 271 requirements was issued on November 18, 1998. SWBT has not yet filed its Kansas application with the FCC. *In the Matter of Southwestern Bell Telephone Company-Kansas Compliance with Section 271 of the Federal Telecommunications Act of 1996, Docket No. 97-SWBT-4 11 –GIT.*

5. The FCC would no doubt take a dim view of an RBOC filing an application for which the FCC is mandated to consult with state regulators when the state review process is still ongoing. Even if it was filed, it would be highly unlikely that the FCC would approve the application in absence of a full, detailed and complete state record. The Commission should tailor the procedural schedule in this key case to reflect its importance and the nature and scope of the task before the parties and the Commission. It should not be controlled by artificial deadlines.

6. Public Counsel believes that a reasonable schedule would allow at least 90 days from December 2, 1998 to file rebuttal testimony, that being on or about March 2, 1999. More than a week can then be allowed for surrebuttal testimony and the other dates can then fit in:


Rebuttal	March 2
Surrebuttal	March 31
Prehearing	April 8
Hearings	in May

WHEREFORE, Public Counsel asks the Commission to modify the procedural schedule in this case so that it provides a realistic and reasonable time for filing rebuttal testimony and further reflects the importance of the case and the nature and scope of the

proceedings. Public Counsel further requests that the remainder of the schedule be adjusted based on these same considerations.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed this 15 day of

December, 1998 to the attached service list in this case.

