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December 1, 1998

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

RE: TA-99-47

FILED
DEC 1 1998

Missouri Public
Service Commission

Dear Mr. Roberts:

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

**OFFICE OF THE PUBLIC COUNSEL'S MOTION TO
STAY PROCEEDING, OR IN THE ALTERNATIVE,
MOTION TO DISMISS**

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 1 1998

Missouri Public
Service Commission

In the Matter of the Application of)
Southwestern Bell Communications Services)
Inc., d/b/a Southwestern Bell Long Distance)
for a Certificate of Service Authority to provide)
Interexchange Telecommunications Services)
within the State of Missouri.)

Case No. TA-99-47

**OFFICE OF THE PUBLIC COUNSEL'S MOTION TO STAY
PROCEEDING, OR IN THE ALTERNATIVE, MOTION TO DISMISS**

COMES NOW the Office of the Public Counsel ("Public Counsel") and respectfully move the Public Service Commission of the State of Missouri ("PSC" or "Commission") to stay this proceeding pending final action by the Federal Communications Commission on Southwestern Bell Telephone Company's Application for Authorization to Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996.

Section 271 (a) prohibits a Bell operating company or an affiliate of a Bell operating company from providing interLATA telecommunications service. This prohibition can be removed only upon approval of an application under Section 271 by the FCC. Until such approval, in-region interLATA service by Southwestern Bell Telephone Company (SWBT) or its affiliates is unauthorized by federal law.

SWBT's application for in-region interLATA service has not yet been filed with the FCC, let alone approved. SWBT filed its intent to file its application under Section

271 with this Commission on November 18, 1998 in Case No. TO-99-227. Prior to its action on the Section 271 application, the FCC must consult with and obtain the recommendation of the Missouri PSC and the U. S. Department of Justice. The SWBT Section 271 process is just beginning and is in the earliest of stages of first obtaining a Missouri PSC record to form the basis of the consultation and recommendation.

It is premature to develop a procedural schedule and establish filing deadlines for this long distance service certificate case. The PSC has no authority to issue SWBT or its affiliate a certificate when federal law prohibits these companies from operating in the Missouri interLATA market. The application should not have been filed since the PSC cannot grant the requested action as it is a legal impossibility. There is no authority to issue a "contingent" certificate. There is no need to spend time, money and effort filing testimony in a case which may not even be authorized by the FCC. There is no need for Public Counsel, Staff, and the other parties to divide their efforts and to stress their resources litigating this application and SWBT's Section 271 application in Case No. TO-99-227 at the same time.

This case is clearly subject to a motion to dismiss for lack of jurisdiction because of the PSC's legal inability to grant the application at this time. However, to save the efforts already expended and if the other parties are agreeable, Public Counsel is willing to have the case stayed at this point until final action by the FCC rather than dismissed. Public Counsel, however, does not waive its objection to this proceeding and does not waive its right to pursue a motion to dismiss at a later time. In the alternative, if the Commission does not deem it appropriate to stay the proceedings, Public Counsel moves to dismiss the application for lack of jurisdiction, lack of legal authority by the applicant,

and for failure to state a claim for which relief may be granted in that the grant of the certificate is not permitted under Section 271 of the Federal Telecommunications Act of 1996.

WHEREFORE, Public Counsel moves the Commission to stay this proceeding, or in the alternative, dismiss the proceeding.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

BY:



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed on this 1st of December, 1998 to Counsel of Record as indicated in the following service list and to the Staff of the PSC Attention Bruce H. Bates, Assistant General Counsel, PO Box 360, Jefferson City MO 65102.

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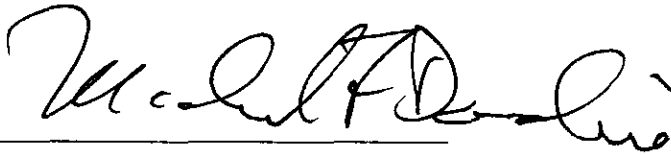
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