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December 16, 1998

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

FILED
DEC 16 1998
Missouri Public
Service Commission

RE: TA-99-47

Dear Mr. Roberts:

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

**OFFICE OF THE PUBLIC COUNSEL'S
REPLY TO SWBT'S RESPONSE**

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

28.

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

FILED
DEC 16 1998
Missouri Public
Service Commission

In the Matter of the application)	
Southwestern Bell Communications Services)	
Inc., d/b/a Southwestern Bell Long Distance)	
for a Certificate of Service Authority to)	
provide Interexchange Telecommunications)	
Service within the State of Missouri)	
File an Application for Authorization)	
To Provide In-Region InterLata Service)	Case No TA-99-47
Originating in Missouri Pursuant to Section)	
271 of the Telecommunications Act of)	
1996)	

**OFFICE OF THE PUBLIC COUNSEL'S
REPLY TO SWBT'S RESPONSE**

COMES NOW the Office of the Public Counsel and respectfully state the following to the Public Service Commission of the State of Missouri in reply to Southwestern Bell Telephone Company's Response to Public Counsel's Motion to Stay or in the alternative, Motion to Dismiss:

1. Public Counsel does not suggest that the PSC cannot place conditions on a certificate of service under Section 392.470, RSMo. Rather Public Counsel believes that the PSC cannot grant a certificate where the effectiveness of the certificate is conditional on the applicant receiving the legal authority to provide serviced under the certificate in another separate and independent proceeding. Here the applicant does not have the legal authority to provide service under the certificate. if gfrant4ed, the certificate does not provide authority to SWBLD since it has no lawful power to provide service under the certificate. SWBT must

first be granted in region interlata service authority by the FCC prior to this affiliate having any legal ability to provide service in Missouri.

2. The conditions referred to in Section 392.470, RSMo are conditions the PSC employs as regulatory measures.. The PSC imposes these conditions subsequently to the grant of authority that are regulatory directives. The company must follow those conditions after it has legal authority or else face loss or suspension of its certificate. The seven standard conditions SWBT refers to in footnote 1 at page 3 of its Response are conditions governing the conduct of the company, not its legal status. These conditions are enforcement mechanisms under which the PSC regulates and applies sanctions.
3. Public Counsel does not believe the conditional certificate granted in Kansas and Oklahoma should hold any evidentiary weight here. Public Counsel contends that it is unlawful and not in keeping with public policy to grant a certificate contingent on the ability of the applicant to meet the legal ability to provide the service designated in the certificate. Compare this to granting a CPA license, a law license or a medical license contingent on passing the exam and fulfilling the legal prerequisites.
4. The stay will not unduly prejudice SWBT or the customers in Missouri. If history is any guide, SWBT Section 271 application will not be approved in the near

future. At a very minimum, the process is over 7 months away from a final FCC decision, but more likely over a year or more away.

WHEREFORE, Public Counsel asks the PSC to grant its motion.

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 16 day of

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