

Leo J. Bub  
Attorney-Missouri

Southwestern Bell Telephone  
100 North Tucker Boulevard  
Room 630  
St. Louis, Missouri 63101-1976  
Phone 314 247-3060  
Fax 314 247-0881



November 5, 1997

**FILED**

**NOV 06 1997**

**MISSOURI  
PUBLIC SERVICE COMMISSION**

Mr. Cecil I. Wright  
Executive Secretary  
Missouri Public Service Commission  
301 West High Street, Floor 5A  
Jefferson City, Missouri 65101

Re: Case No. TW-97-333

Dear Mr. Wright:

Enclosed for filing with the Commission in the above-referenced case are an original and 14 copies of Southwestern Bell Telephone Company's Suggestions in Opposition to Applications for Rehearing.

Please stamp the extra copy with the date same is filed and return it to me in the enclosed stamped, self-addressed envelope.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "Leo J. Bub".

Leo J. Bub

Enclosures

cc: Attorneys of Record

NOV 06 1997

**MISSOURI  
PUBLIC SERVICE COMMISSION**

**MISSOURI  
PUBLIC SERVICE COMMISSION**

Case No. TW-97-333

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
SUGGESTIONS IN OPPOSITION TO APPLICATIONS FOR REHEARING**

1. Southwestern Bell Telephone Company opposes the Office of Public Counsel , the Mid-Missouri Group and the Small Telephone Company Group's applications for rehearing. These applications raise no points or issues not previously considered by the Commission. Accordingly, theses applications should be denied.

2. OPC expresses the concern that the Commission has placed competitive issues above the telecommunications needs of rural customers. OPC, however, ignores the fact that the Commission in deciding this case was required to and did balance the needs and interests of all customers as the industry moves into the competitive environment mandated by the Telecommunications Act of 1996.

As part of this balancing, the Commission examined the present form of Community Optional Service (COS) and also considered other possible alternatives such as modifying two-way COS so that the return calling would be provided by an 800/888 based service; or replacing the two-way service with a one-way or one-way reciprocal service. The Commission correctly found that the implementation of intraLATA dialing parity and competition will make the present systems for implementing and providing COS unworkable. For example, it will be difficult if not impossible to obtain the data necessary to perform the calling studies to determine whether a

proposed COS route meets the community of interest standard. Significant technological and accounting changes would be necessary to accurately record the traffic. And the entrance of new competitors into the marketplace would require the development of an increasingly complex billing processing system and intercompany compensation mechanism.

In addition, the Commission also appropriately examined the present take rate for COS in its deliberations. While OPC criticizes the Commission for eliminating COS “based on a low take rate,”<sup>1</sup> OPC’s criticism is misplaced. Apparently focusing on the Commission’s citation of record evidence that only one-half of one percent of all telecommunications customers in Missouri avail themselves of COS, OPC states this statistic is not a relevant indicator of the importance of COS to rural customers. OPC is wrong. The lack of interest in COS among Missouri customers as a whole in purchasing COS is relevant as an indication of the value of the service. Moreover, it is not the only or even primary statistic on which the Commission focused. Rather, the Commission trained its attention on the customer take rate on existing COS routes:

The take rate, or percentage of eligible customers who actually subscribe to the service, varies and overall less than thirteen percent of eligible customers avail themselves of this service. Such a small take rate brings into question the actual extent of the community of interest.<sup>2</sup>

And,

“COS is scarcely used and the number of routes which qualify for COS service has steadily declined . . . As previously noted, only 13 percent of eligible customers in all approved COS routes have chosen to subscribe to COS.”<sup>3</sup>

---

<sup>1</sup>OPC’s Application for Rehearing, p. 1.

<sup>2</sup>Report and Order, p. 7.

<sup>3</sup>Report and Order, p. 13.

Based on the evidence in the record presented by all of the parties, the Commission appropriately determined that “retaining a mandated service that is not a necessary function of basic local service is inconsistent with the goal of a more competitive telecommunications environment.”<sup>4</sup>

3. The Mid-Missouri and Small Telephone Company Groups express the concern that the Report and Order fails to address what action must be taken to ensure revenue neutrality to carriers from the elimination of COS. They state that unless some provision is made to preserve revenue neutrality prior to elimination of the service, company revenues will be eliminated or reduced and will result in an unconstitutional taking unless those financial impacts are considered.<sup>5</sup> Southwestern Bell notes that the Commission’s Report and Order does not deny revenue neutrality for any company. The Order does not prohibit any company that believes itself to be aggrieved from the elimination of COS to make a filing with the Commission to achieve revenue neutrality on a company specific basis.

While certainly not grounds requiring the Commission to change any aspect of its decision in this case, the Commission may want to issue a clarification to its Report and Order that would expressly allow any company believing itself to be financially harmed by the decision to eliminate COS to make a filing with the Commission permitting the company to achieve revenue neutrality.

4. The Mid-Missouri and Small Telephone Company Groups also complain that the Commission used an unauthorized and unlawful procedure in issuing its Report and Order. The

---

<sup>4</sup>Report and Order, p. 11.

<sup>5</sup>Mid-Mo App. at p. 2; STCG App. at p. 7.

focus of this complaint appears to be based on their confusion with the Commission's designation of this docket as a "working" or "W" case and their concern that they may have been deprived of procedural rights ordinarily accorded in traditional contested case. Neither, however, has cited any procedural deficiency or identified how their procedural rights were prejudiced.

While the Commission established this case as a "W" case to inquire into policy matters, it did not ignore the requirements of due process. Other than the case designation and a certain liberalization of its rules designed to encourage broader participation in the docket (e.g., permitting parties to appear and participate without counsel), there was little to procedurally differentiate it from a traditional contested case. Here, adequate notice of the docket was given. In fact, to ensure extensive dissemination of the notice, the Commission directed it be sent to every certificated local exchange company and interexchange carrier in the state, to all members of the Missouri General Assembly, and to all newspapers in the state. The Commission established a traditional procedural schedule that called for the filing of direct, rebuttal and surrebuttal testimony; and a hearing that permitted parties to make opening statements, present evidence, and confront and cross examine opposing witnesses. The Commission also provided for parties to file initial and reply briefs. And its order contained a ten page of findings of fact section and a conclusion of law section. The Commission's designation of this docket as a "W" simply did not have any negative impacts on the parties' procedural rights.

WHEREFORE, Southwestern Bell respectfully requests the Commission to deny OPC's and the Mid-Missouri and Small Telephone Company Groups' applications for rehearing.

MICHAEL F. DANDINO  
OFFICE OF THE PUBLIC COUNSEL  
301 WEST HIGH STREET, SUITE 250  
JEFFERSON CITY, MO 65101

CHERLYN D. MCGOWAN  
MISSOURI PUBLIC SERVICE COMMISSION  
301 WEST HIGH STREET, SUITE 530  
JEFFERSON CITY, MO 65101

WILLIAM R. ENGLAND, III  
BRYDON, SWEARENGEN & ENGLAND  
312 EAST CAPITOL AVENUE  
JEFFERSON CITY, MO 65101

CRAIG S. JOHNSON  
ATTORNEY AT LAW  
ANDERECK, EVANS, MILNE, PEACE & BAUMHOER  
301 EAST MCCARTY, THIRD FLOOR  
JEFFERSON CITY, MO 65101

PAUL S. DEFORD  
LATHROP & GAGE  
2345 GRAND BLVD, SUITE 2500  
KANSAS CITY, MO 64108

LINDA K. GARDNER  
UNITED TELEPHONE COMPANY OF  
MISSOURI  
5454 W. 110TH STREET  
OVERLAND PARK, KS 66211

JAMES C. STROO  
GTE TELEPHONE OPERATIONS  
1000 GTE DRIVE  
WENTZVILLE, MO 63385

CARL J. LUMLEY  
LELAND B. CURTIS  
CURTIS, OETTING, HEINZ, GARRETT & SOULE, P.C.  
130 S. BEMISTON, SUITE 200  
CLAYTON, MISSOURI 63105

PAUL H. GARDNER  
GOLLER, GARDNER & FEATHER  
131 E. HIGH STREET  
JEFFERSON CITY, MO 65101

MARK W. COMLEY  
NEWMAN, COMLEY & RUTH  
205 E. CAPITOL  
P.O. BOX 537  
JEFFERSON CITY, MO 65102

JULIE GRIMALDI  
SPRINT COMMUNICATIONS COMPANY  
8140 WARD PARKWAY  
KANSAS CITY, MO 64114

STEPHEN MORRIS  
MCI TELECOMMUNICATIONS CORPORATION  
701 BRAZOS, SUITE 600  
AUSTIN, TX 78701