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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the Southwestern Bell)
Telephone Company's tariffs to revise P.S.C.) **CASE NO. TT-96-21**
Mo.-No. 36, Optional Payment Plan (volume)
and term discounts) for Switched Access)
Services.)

CONCURRING OPINION OF COMMISSIONER HAROLD CRUMPTON

The motion of Competitive Telecommunications Association of Missouri (CompTel-MO) to lift the suspension imposed on the tariffs proposed in this case was granted by the majority, and I concur in that decision. CompTel-MO made a convincing argument for permitting the tariffs to take effect now. In its Application to Intervene, MCI Telecommunications Corporation (MCI) stated, "MCI supports the proposed tariffs as a reasonable method for permitting interexchange carriers to obtain limited reductions in access charges...." CompTel-MO made a similar assertion in its Application to Intervene. GTE Midwest Incorporated (GTE), a local exchange carrier authorized to provide local exchange, access and intralata toll services, stated that it generally supports Southwestern Bell Telephone Company (SWBT) in this docket.

Where the Commission determines there is a public benefit to be obtained from a proposed service or tariff which the public should have available during the pendency of proceedings, the Commission is justified in not suspending or in this case, lifting the suspension. I am perplexed by the ability of some to approach the Commission with stipulations and agreements for rate reductions and request immediate approval on the grounds that formal evidentiary proceedings would deny the public the benefit of the reductions until the case is formally litigated, while not applying that same principle in this case.

The majority has voted to permit the benefits to take effect immediately and remain in effect until all parties have had their day before the Commission. If, after considering all of the competent and substantial evidence upon the whole record, the Commission finds that these new tariffs are

not in the public interest, i.e., not just and reasonable or otherwise lawful, the tariffs can be ordered to be of no further effect. Further, CompTel-MO proposed that interexchange carriers that have subscribed to the discounted service can be ordered to pay the undiscounted rate for such service already used.

The standard requirement is that the proponent of a position or of an argument must meet its burden of proof or persuasion. In the case of a tariff filing it is the company, in this case SWBT, which has the burden of proving to the Commission that the tariff is in the public interest. However, the proponent of suspension must bear its burden as well. It was AT&T Communications of the Southwest, Inc. (AT&T), not SWBT, that requested suspension of the tariff. Therefore, the burden of persuading the Commission to further suspend or reject the proposed tariff is upon AT&T's shoulders.

If, for example, an intervenor were to allege that a tariff is not in the public interest, that intervenor must then go forward and offer the proof in support of that allegation. It would be illogical at this point to require SWBT to disprove AT&T's argument as that would require SWBT to disprove a negative. That is to say, SWBT would have to prove that its tariffs are not "not in the public interest."

In the case now before the Commission, the burden of proving that the optional payment plan is in the public interest rests squarely with SWBT. The burden of proving that the new service is anti-competitive is properly placed upon AT&T. Any other scheme would not serve the public interest.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, reading "Harold Crumpton". The signature is written in a cursive, flowing style with a large loop at the end of the last name.

HAROLD CRUMPTON
Commissioner

(S E A L)

Dated at Jefferson City, Missouri,
on this 4th day of October, 1995.