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September 25, 1997

FILED

SEP 26 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 is an original and 14 copies of Southwestern Bell Telephone Company's Reply To The Mid-Missouri Group's Notice Of FCC Order.

Please stamp "Filed" on the extra copy and return the copy to me in the enclosed self-addressed, stamped envelope.

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

Very truly yours,

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

Leo J. Bub

Enclosure

cc: Attorneys of Record

FILED

SEP 26 1997

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of an Investigation into the Provision
of Community Optional Calling Service in Missouri.

) Case No. TW-97-333
)

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY TO THE MID-MISSOURI GROUP'S NOTICE OF FCC ORDER**

Southwestern Bell Telephone Company disagrees with the Mid-Missouri Group's assessment of the impact on intrastate dialing parity of the recent 8th Circuit Decision in The People of the State of California, et al. v. FCC, 1997 U.S. App. LEXIS 22343 (8th Cir. August 22, 1997).

This docket was not just about the impact of 1+ intraLATA presubscription on Community Optional Service (COS). The presence of new competitive local exchange carriers (CLECs) present the same issues as additional 1+ intraLATA toll providers. Questions raised in this docket included whether all competitive carriers should be required to offer COS. This group included not only IXCs, but CLECs. The questions about the continued viability of the return calling feature arose not only because of the presence of IXCs in target exchanges, but also because of the presence of CLECs. The major metropolitan areas of St. Louis, Kansas City and Springfield are all COS target exchanges. Given that competition has already arrived in these areas, the Commission would still need to address the issues it is presently considering even if 1+ intraLATA presubscription went away.

But even though the Court vacated the Federal Communications Commission's (FCC's) dialing parity rules as they applied to intrastate services, it did not vacate the requirement for all local exchange carriers (LECs) to provide dialing parity for both telephone exchange and toll services. These requirements come from the Telecommunications Act of 1996, not the FCC.

Section 251(b)(1) which sets out the obligations of all LECs, imposes on each LEC several duties including:

(3) Dialing Parity - The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays. (emphasis added)

While it is clear that the FCC has no jurisdiction over intrastate toll dialing parity in the wake of the 8th Circuit's August 22, 1997 Order, state public utility commissions have always had control over the timing of intraLATA presubscription. This fact is reflected in the Missouri Commission's May 22, 1997 Order in Case No. TO-97-220 deferring the now vacated FCC intraLATA dialing parity deadline for the Mid-Missouri Group (and Small Telephone Company Group (STCG)) to the earlier of April 1, 1998 or the resolution of the issues surrounding COS and the PTC Plan. Apart from the vacated FCC rules, there are independent reasons for the Commission to require compliance with the Act's dialing parity requirements by the date set out in its May 22, 1997 Order. These reasons include promoting competition in Missouri and bringing new services and additional choices to consumers.

Although the 8th Circuit vacated the FCC's dialing parity rules¹ as they apply to intrastate toll services, these rules continue to apply to interstate intraLATA traffic, which triggered the Mid-Missouri Group and STCG to file for an extension of the dialing parity requirements. The 8th Circuit stated:

. . . we conclude that the FCC exceeded its jurisdiction in promulgating its dialing parity rules . . . but we set aside such rules

¹47 CFR Sections 51.205-51.215 (inclusive).

only to the extent that they pertain to intraLATA telecommunications traffic Our decision to vacate the Federal Communications Commission's (FCC's) dialing parity rules does not apply to the extent that the Commission's rules govern the very small percentage of intraLATA, toll, interstate telecommunications.²


Since Mid-Missouri and STCG are still required to implement 1+ intraLATA presubscription for the interstate traffic they handle (e.g., a call between Mid-Missouri's Pilot Grove exchange and Kansas City, Kansas which is part of the Kansas City LATA), they will likely, for technical reasons, implement presubscription for intrastate intraLATA traffic at the same time. Otherwise, they would have to permit their customers to have three primary interexchange carriers (PICs): one for interLATA traffic (as most offer today), one for intrastate intraLATA (which would be the PTC until the PTC Plan is eliminated or revised), and one for interstate intraLATA traffic. It does not appear to be technically feasible or practicable to do this. Instead, it is likely that these carriers will do what most other carriers have done and simply implement presubscription for all intraLATA calls (e.g., both inter and intrastate) at the same time.

²The People of the State of California, et al. v. FCC, 1997 U.S. App. LEXIS 22343 at *18 and n. 6 (8th Cir. August 22, 1997).

In sum, Southwestern Bell does not believe the August 22, 1997 8th Circuit Decision should cause the Commission to delay its decision in this docket or change the substance of that decision.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

I served this document on the parties listed below by first-class U.S. Mail postage prepaid, on September 25, 1997.



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