

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
September 13, 1999**

CASE NO: TC-2000-226

Office of the Public Counsel

P.O. Box 7800
Jefferson City, MO 65102

Legal Department

Southwestern Bell Telephone Company
One Bell Center Room 3520
St Louis, MO 63101

Carl J. Lumley/Leland B. Curtis

Curtis, Oetting, Heinz, Garrett & Soule, P.C.
130 S. Bemiston, Suite 200
St. Louis, MO 63105

General Counsel


Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Stephen Morris, Esq./Patricia Ana Garcia

Escobedo, Esq.
MCI Worldcom Communications, Inc.
701 Brazos, Suite 600
Austin, TX 78701

Enclosed find certified copy of a NOTICE in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

Uncertified Copy:

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Brooks Fiber Communications of)
Missouri, Inc.,)

Complainant,)

v.)

Case No. TC-2000-226

Southwestern Bell Telephone)
Company,)

Respondent.)

NOTICE OF COMPLAINT

Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, Missouri 63101

CERTIFIED MAIL

On September 9, 1999, Brooks Fiber Communications of Missouri, Inc., filed a complaint with the Missouri Public Service Commission against Southwestern Bell Telephone Company, a copy of which is enclosed. Pursuant to 4 CSR 240-2.070, Respondent Southwestern Bell Telephone Company shall have **30 days** from the date of this notice to file an answer or to file notice that the complaint has been satisfied.

In the alternative, the Respondent may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether or not the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer shall be due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102-0360

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been mailed to the Complainant.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Dated at Jefferson City, Missouri,
on this 13th day of September, 1999.

Kevin A. Thompson, Deputy Chief Regulatory Law Judge

Copy to: Carl Lumley, Esq.
Leland B. Curtis, Esq.
Curtis, Oetting, Heinz, Garrett & Soule, P.C.
130 S. Bemiston, Suite 200
St. Louis, MO 63105

Stephen F. Morris, Esq.
Patricia Ana Garcia Escobedo, Esq.
MCI WORLDCOM Communications, Inc.
701 Brazos, Suite 600
Austin, TX 78701

Office of the Public Counsel

FILED³

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION SEP 09 1999

Missouri Public
Service Commission

Brooks Fiber Communications of Missouri, Inc.)
v.)
Southwestern Bell Telephone Co.)

Case No. TC-2000-226

COMPLAINT

Brooks Fiber Communications of Missouri, Inc. (Brooks), an MCI WORLDCOM Communications, Inc., affiliate, by and through its attorneys, for its Complaint against Southwestern Bell Telephone Company (SWBT) alleges as follows:

I. INTRODUCTION

1. This action arises from SWBT's breach of contract by its refusal to pay Brooks "reciprocal compensation" payments due under the interconnection agreement (the "Agreement") between SWBT and Brooks. The Commission is authorized to hear Brooks' complaint pursuant to R.S.Mo. Sections 386.330, 386.320, 386.390, 386.400 and 4 CSR 240-2.070, and the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151, et seq.) (The "Act" or the "1996 Act").

2. Brooks and SWBT entered into the Agreement pursuant to the Act. The relevant portions of the Agreement are attached hereto as Exhibit 1 and are incorporated by reference; Brooks further incorporates by reference the Interconnection Agreement between Brooks and SWBT in its entirety as filed with the Commission. In accordance with the Act, during early 1997, Brooks and SWBT negotiated the terms of the Agreement, including the provisions relating to reciprocal compensation. The Missouri Public Service Commission (the "Commission") approved the Agreement on May 15, 1997, and the Agreement became effective as of May 28, 1997.

3. As described in more detail below, the Agreement requires SWBT to pay Brooks "reciprocal compensation" for the service Brooks provides to SWBT throughout the portions of Brooks' Missouri service area that overlap SWBT's Missouri local service areas, when Brooks

2

delivers local calls made by SWBT's local customers to Internet Service Providers ("ISPs") that are Brooks local customers. To date, SWBT has wrongfully withheld over \$4.3 million in reciprocal compensation payments that are due to Brooks under the Agreement.

II. PARTIES

4. Brooks is a Delaware corporation and an affiliate of MCI WORLDCOM Communications, Inc. Brooks is a "local exchange carrier" within the meaning of the Act, is authorized to and does provide local exchange services within the State of Missouri as a foreign corporation, and is subject to the jurisdiction of the Commission. Brooks is authorized as a competitive local exchange carrier (CLEC) under certificate granted and tariffs approved by the Commission. Its principal regulatory office currently is located at 701 Brazos, Suite 600, Austin, Texas 78701.

5. The Commission should direct all communications and pleadings in this docket to Brooks' representatives as follows:

Carl Lumley
Leland B. Curtis
Curtis, Oetting, Heinz, Garrett & Soule, P.C.
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
314-725-8788
314-725-8789 (FAX)

Stephen F. Morris
Senior Attorney
MCI WORLDCOM Communications, Inc.
701 Brazos, Suite 600
Austin, Texas 78701
(512)495-6727
(512)477-3845 (FAX)

Patricia Ana Garcia Escobedo
Senior Attorney
MCI WORLDCOM Communications, Inc.
701 Brazos, Suite 600,
Austin, Texas 78701
512- 495-6700
512- 477-3845 (FAX).

6. SWBT is a Missouri corporation with its principal office at One Bell Center, St. Louis, Missouri 63101. SWBT is a "local exchange carrier" within the meaning of the Act, is authorized to and does provide local exchange services within the State of Missouri, and is subject to the jurisdiction of the Commission. SWBT is a "local exchange telecommunications company" and a "public utility" as those terms are defined in Section 386.020, RSMo (1994).

7. SWBT's address, telephone number, and facsimile number are, respectively, One Bell Center, Room 3520, St. Louis, Missouri 63101, 314-235-4300, and 314-331-2195 (FAX).

III. JURISDICTION

8. The Commission has jurisdiction over this action under the Act [*Iowa Utilities Board v. FCC*, 120 F.3d 753, 804 (8th Cir. 1997); 47 U.S.C. § 252(e)(6)], and under state law. Section 386.330 requires that the Commission "shall make such inquiry in regard to any thing done or omitted to be done by any such public utility . . . in violation of any provision of law or in violation of any order or decision of the commission" [§ 386.330(1), R.S.Mo.] on complaint by any aggrieved person or corporation [§ 386.330 (2), R.S.Mo.]. Pursuant to its general supervision authority, the Commission is authorized to secure SWBT's "compliance with all provisions of law, orders and decisions of the commission" [§ 386.320 (1), R.S.Mo.]. Brooks files its complaint in accordance with Section 386.390 of state law, setting forth the violation by SWBT of the Commission order in Case No. TO-97-334, approving the Agreement and requiring the Parties' compliance with the terms of the Agreement [§ 386.390 R.S.Mo.]. Brooks further brings its complaint pursuant to Section 386.400, authorizing Books, as a corporation, to complain on any grounds upon which complaints are allowed to be filed by other parties and requiring the PSC to adopt and follow the same procedure adopted and followed in other cases [§ 386.400 R.S.Mo.].

IV. GENERAL ALLEGATIONS

Local Interconnection Agreements and the 1996 Act

9. Historically, SWBT and other incumbent carriers enjoyed monopoly power over local telephone service. Congress decided to end those monopolies by enacting the landmark

1996 Act "to shift monopoly [telephone] markets to competition as quickly as possible." [H.R. Rep. No. 104-204, at 89 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 55.] To that end, the Act subjects incumbents such as SWBT to "a host of duties" aimed at bringing competition to the local telephone market. [*AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 726 (1999).]

10. The Act requires incumbent local exchange carriers like SWBT to make the local telephone networks available for use by new competitors, and sets forth procedures for opening local markets to competition. [47 U.S.C. §§ 251-52.]

11. The terms under which new entrants interconnect with the incumbent's network are contained in interconnection agreements. [47 U.S.C. § 252.] The Act directs new entrants and incumbents to attempt to reach agreement upon terms of interconnection through negotiation. If they cannot agree, the governing state commission conducts an arbitration to resolve disputed issues. [*Id.* § 252(b)(1).] The results of the negotiation and arbitration are memorialized in binding interconnection agreements as approved by the appropriate state commission. [*Id.* § 252(e).]

12. The duties imposed by the Act are minimum requirements only, and parties may agree to obligations in interconnection agreements that go beyond the Act's requirements. The Act provides that incumbent carriers and new entrants "may negotiate and enter into a binding agreement . . . without regard" to the Act's minimum obligations. [47 U.S.C. § 252(a)(1).]

Inter-Carrier Compensation in the Context of Local Competition

13. One of the principal issues that arises in the context of local competition is inter-carrier compensation. With the advent of local competition, customers of one local carrier necessarily will call customers of another local carrier. When that happens, the two carriers must assist each other in delivering the calls. There are two forms of inter-carrier compensation local carriers can receive for assisting another carrier in delivering calls: "reciprocal compensation" and the sharing of "access charges."

14. The first form of inter-carrier compensation—reciprocal compensation—is designed to compensate a carrier for completing a local call, as defined by the parties to the

interconnection agreement, for another carrier. When a customer of one carrier makes a local call to a customer of another carrier, only the originating party (i.e., the caller) pays its carrier for the telephone services—leaving the other carrier uncompensated. The caller's local carrier must therefore compensate the other carrier whose facilities are used to complete the local call.

15. The second form of inter-carrier compensation is access charges. When a caller makes a long-distance toll call he pays his long-distance company, and not his local carrier, for the call. In turn, the long-distance company pays access charges to local telephone carriers to compensate the local carriers for originating and terminating the long distance toll calls over their networks. The service local carriers provide to long-distance companies in this context is "exchange access," which the 1996 Act defines as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services" [47 U.S.C. § 153(16).]

Treatment of Reciprocal Compensation and Access Charges in the Interconnection Agreement

16. The Agreement addresses these compensation issues by specifying what traffic is subject to reciprocal compensation and what traffic is "exchange access" traffic subject to access charges. Reciprocal compensation obligations apply to "Local Traffic" as defined in the Agreement: "'Local Traffic' means traffic that originates and terminates within a SWBT exchange including SWBT mandatory local calling scope arrangements. Mandatory Local Calling Scope is an arrangement that requires end users to subscribe to a local calling scope beyond their basic exchange serving area." [Ex. 1, Agreement Appendix Define at P.] The Agreement further provides that:

Brooks agrees to compensate SWBT for the termination of Brooks Local Traffic originated by Brooks end users in the SWBT exchanges described in Appendix DCO and terminating to SWBT end users located within those exchanges referenced therein. SWBT agrees to compensate Brooks for the termination of SWBT Local Traffic originated by SWBT end users in the SWBT exchanges described in Appendix DCO and terminating to Brooks end users located within those exchanges referenced therein.

[Ex. 1, Agreement at III, A, 1, b, p. 5.] Local interconnection rates are \$0.0092 per minute of use at the tandem and \$0.0072 per minute of use at the end office. [Ex. 1, Agreement at III, A, 2, p. 5.] Local calls to ISPs constitute Local Traffic subject to reciprocal compensation under the Agreement.

17. In contrast, reciprocal compensation obligations do not apply when SWBT and Brooks interconnect to provide "Switched Exchange Access Services," which relate to the origination and termination of long distance toll traffic. [Ex. 1, Agreement at III, D, 3 and III, E.] When the parties provide each other with Switched Exchange Access Services, the Agreement provides that they will share the access charges paid by long-distance companies. The parties have not treated local calls to ISPs as long distance Switched Exchange Access Service.

18. If SWBT were permitted to treat local calls to ISPs as traffic that is not subject to reciprocal compensation, Brooks would not be compensated for the service it provides in delivering local calls made by SWBT customers to Brooks customers that are ISPs. The Agreement does not permit the exchange of traffic without compensation to either Party.

SWBT's Treatment of Calls to Internet Service Providers as Local Traffic

19. An ISP provides its customers the ability to obtain on-line information through the Internet. ISPs provide "information services" to their customers. Information services means "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications[.]" [47 U.S.C. § 153(20).] ISPs purchase local telephone services to provide these information services. They do not provide either local or long distance telephone services.

20. The most common method by which an Internet user connects to an ISP is via the public switched telephone network. ISPs are assigned a local seven-digit telephone number when they purchase local service. All local exchange carriers, including SWBT, bill their customers for a local call when their customers call ISPs within the local calling area. The customers' charge is determined by the carriers' local tariffs. Local exchange carriers do not receive access charges from ISPs, but instead provide local services to ISPs under ordinary local tariffs for business

customers. Local exchange carriers also treat calls to ISPs as local in the revenue and expense reports they file with the FCC.

21. When the Parties negotiated the Agreement, they understood and intended for local calls to ISPs to be treated as Local Traffic subject to reciprocal compensation under the Agreement. Both before and after the Agreement became effective in May 1997, SWBT treated calls to ISPs as local traffic. For example:

- SWBT assigns its ISP customers a local seven-digit telephone number when they purchase local service for their use in providing information services;
- When SWBT customers make local calls to ISPs, SWBT bills its customers for those calls pursuant to its local tariff;
- Similarly, SWBT provides local services to ISPs under ordinary local tariffs for business customers;
- In ARMIS and other reports filed with the FCC, SWBT has treated revenues and expenses associated with ISP traffic as intrastate rather than interstate; and
- SWBT does not have measures in place that segregate ISP traffic from other local traffic and measure such traffic for billing purposes. Indeed, the industry standards that govern the form of bills that carriers send one another for reciprocal compensation do not require local calls to ISPs to be segregated or treated any differently from any other local calls.

22. For several months after the Agreement became effective, SWBT knowingly paid Brooks reciprocal compensation for calls placed by SWBT's customers to Brooks' ISP customers. Similarly, SWBT sent monthly invoices to Brooks requiring Brooks to pay reciprocal compensation for calls placed by Brooks' customers to SWBT's customers, including ISPs. Brooks has paid those invoices and has otherwise performed its obligations under the Agreement.

23. In or about November 1997, however, SWBT breached the Agreement by refusing to pay Brooks the full amount due in reciprocal compensation. SWBT unilaterally began withholding reciprocal compensation payments based on SWBT's internal estimate of the portion of the reciprocal compensation invoices it claimed was attributable to calls to ISPs.

24. Brooks has demanded that SWBT pay the full amounts due for reciprocal compensation, plus interest, as provided in the Agreement (see Exhibit 2 attached hereto and

incorporated by reference). SWBT has refused (see Exhibit 3 attached hereto and incorporated by reference). Accordingly, SWBT has failed to perform its obligations and is in material breach of the Agreement. As a proximate result of SWBT's breach of the Agreement, Brooks has suffered damages, which currently exceed \$ 4.3 million and continue to accrue.

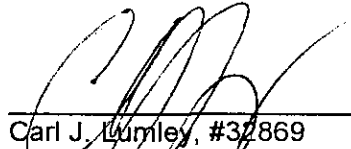
V. PRAYER FOR RELIEF

WHEREFORE, Brooks respectfully requests this Commission to enter an order:

- (a) Serving Brooks' complaint on SWBT and requiring that SWBT respond to Brooks' complaint in accordance with the Commission's rules;
- (b) Requesting that the Public Service Commission Staff investigate SWBT's violation of the Agreement and the Commission's order in Case No. TO-97-334;
- (c) Establishing a pre-hearing conference that SWBT and Brooks shall be ordered to attend and develop a schedule to hear Brooks' complaint;
- (d) Entering a protective order to facilitate discovery by the Parties in this case;
- (e) Stating that reciprocal compensation for ISP traffic is owed by SWBT to Brooks at the rate for local interconnection established in the Agreement; and
- (f) Awarding any other relief that this Commission deems just and proper.

Respectfully submitted,

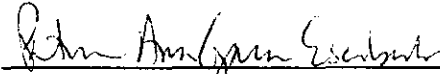
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GARRETT & SOULE, P.C.



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Brooks Fiber Communications of Missouri, Inc.,

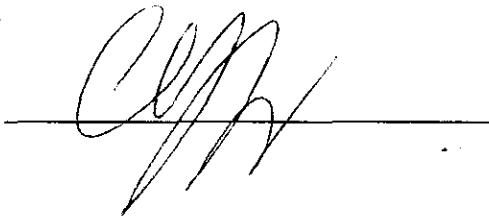
CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was hand delivered this 9th day of September

1999 to:

Office of Public Counsel
Missouri Public Service Commission
301 West High Street, Suite 250
St. Louis, Missouri 63105

Southwestern Bell Telephone company
One Bell Center, Room 3520
St. Louis, Missouri 63101





Commissioners

SHEILA LUMPE
Chair

HAROLD CRUMPTON

CONNIE MURRAY

ROBERT G. SCHEMENAUER

M. DIANNE DRAINER
Vice Chair

Missouri Public Service Commission

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GORDON L. PERSINGER
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Director, Research and Public Affairs

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Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Information Sheet Regarding Mediation of Commission Formal Complaint Cases

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.


In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.

Date: January 25, 1999



Dale Hardy Roberts
Secretary of the Commission

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Southwestern Bell Tele. Co.
One Bell Center Rm 3520
St. Louis, Mo 63101

4a. Article Number

4b. Service Type

- | | |
|---|------------------------------------|
| <input type="checkbox"/> Registered | <input type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail | <input type="checkbox"/> Insured |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD |

7. Date of Delivery

SEP 14 1999

5. Received By: (Print Name)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: Addressee or Agent

X 

PS Form 3811, December 1994

Domestic Return Receipt

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to	
Southwestern Bell	
Street & Number	
One Bell Center Rm 3520	
Post Office, State, & ZIP Code	
St Louis Mo 63101	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

Thank you for using Return Receipt Service.

PS

STATE OF MISSOURI

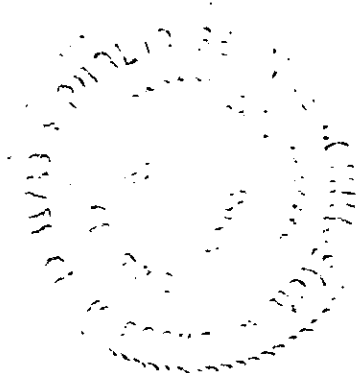
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 13TH day of SEPTEMBER, 1999.





Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge