

B
CD
RD

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

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

DISSENTING OPINION OF
COMMISSIONERS KENNETH MCCLURE AND DUNCAN E. KINCHELOE

We respectfully dissent from the Commission's Order Setting Procedural Schedule and Granting Motion. The Commission's action allows the tariffs filed to take effect at the end of the ninety (90) day suspension period on November 3, 1995, pending a subsequent order as allowed by Subsection 392.230.3 RSMo 1995. Presumably when the tariffs become effective on that date, they are to be considered "just and reasonable" under the statute.

AT&T, in its Response to Motion for Relief from Suspension of Tariffs filed on September 25, 1995, raised a concern regarding the burden of proof. We share the concern that some might argue that the burden in this case may now shift to parties opposing the tariff. In our opinion, a party filing tariffs contested before the Commission should retain the burden and not be able to slip in the back door by Commission action of this nature.

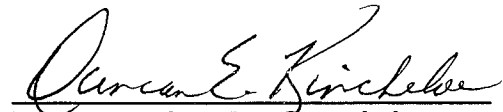
This should be true especially of cases like this one in which anticompetitive impacts are alleged. As we understand certain of those allegations, it is believed that the tariff will entice access customers to gamble against the development of a more favorable competitive market and will confront them with substantial accumulated charges if they later determine that they want to take advantage of this market in three to five years. In considering such allegations, the Commission will presumably

want to focus not simply on the tariff's effects on those customers taking service under it, but also on its broader impact upon the development of a competitive access market. We would hope that the Commission will always be assured of an affirmative showing that a tariff will not have unreasonable, anticompetitive effects.

For this reason we dissent.

Respectfully submitted,


Kenneth McClure, Commissioner


Duncan E. Kincheloe, Commissioner

Dated at Jefferson City, Missouri, on
this 28th day of September, 1995.