

P2
164

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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Petition of MCI Telecom-)
munications Corporation to Require Southwestern) Case No. TO-99-125
Bell Telephone Company to Implement IntraLATA)
Presubscription No Later Than February 8, 1999.)

ORDER GRANTING PARTICIPATION
AND ESTABLISHING PROCEDURAL SCHEDULE

On January 12, 1999, the Commission issued an order which granted interventions and requested the parties to file a proposed procedural schedule. The order also denied the intervention of the Telecommunications Resellers Association (TRA) for failure to comply with 4 CSR 240-2.075 but gave TRA an opportunity to cure its application for intervention.

On January 20 TRA filed a Request for Reconsideration. In its request, TRA stated that its "interest in this matter is limited to monitoring the proceedings and filing a post-hearing brief" and therefore, would like to participate without intervention in accordance with 4 CSR 240-2.075. The Commission finds that TRA's request to participate without intervention is reasonable and should be granted on the limited basis as set out by TRA.

Jackson County, Missouri, was granted intervention in the Commission's January 12 order. On February 1, Jackson County filed a Withdrawal of Intervention of Jackson County, Missouri. Although unaccompanied by any explanation, Jackson County indicates its desire

to withdraw from participation in this matter and therefore, the Commission will dismiss Jackson County as a party.

The parties met in a prehearing conference on January 28. Birch Telecom of Missouri, Inc. (Birch) filed a brief on February 8 indicating its opinion that the recent United States Supreme Court decision in AT&T Corp. v. Iowa Utilities Board, ____ U.S. ____, slip opinion, January 25, 1999, reinstated dialing parity rules set out by the Federal Communications Commission (FCC) and has a substantial impact on this case. Birch stated that it believes Southwestern Bell Telephone Company (SWBT) is now required by law to have implemented intraLATA presubscription no later than February 8, 1999, and that the Commission has authority to oversee that implementation.

On February 9, AT&T Communications of the Southwest, Inc. (AT&T) and MCI Telecommunications Corporation (MCI) filed a Joint Motion for Immediate Declaratory Ruling and Establishment of Procedural Schedule. AT&T and MCI stated that the AT&T Corp. v. Iowa Utilities Bd. decision reinstates 47 CFR 51.211, requiring implementation of intraLATA toll dialing parity no later than February 8, 1999. The movants request that the Commission issue a declaratory ruling which would confirm SWBT's obligation to immediately activate intraLATA presubscription. The movants also request that the Commission order SWBT to file its implementation plan immediately and recommend that the Commission establish a new docket to address "post-activation implementation issues." AT&T and MCI set out the following proposed procedural schedule for that new docket:

SWBT direct testimony	-	March 15, 1999
Rebuttal testimony	-	March 30, 1999
Surrebuttal and cross-surrebuttal Testimony	-	April 13, 1999
Hearing memorandum	-	April 14, 1999
Hearings	-	April 19-23, 1999

SWBT filed its proposed procedural schedule on February 8 and a response to AT&T and MCI's motion on February 16. In its pleadings, SWBT stated that AT&T Corp. v. Iowa Utilities Bd. does not change its view that "implementation of 1+ presubscription before SWBT has received interLATA toll authority would place it at a severe competitive disadvantage, and that it was also inappropriate to require 1+ presubscription while SWBT labored under the burden of subsidizing the secondary carriers under the PTC plan." SWBT stated several reasons why it does not believe the Commission should grant AT&T and MCI's request. Those reasons are: 1) the decision is not yet final; 2) the decision is now on remand for decision on the substantive challenges; 3) the FCC should be given an opportunity to address the issue; 4) the dialing parity rules are guidelines for state commissions, not a mandate regarding implementation; 5) 47 U.S.C. 271(e)(2)(B) gives the state commissions the authority to establish the timing of intraLATA dialing parity; 6) any dialing parity requirements placed on SWBT must also be placed on the other incumbent local exchange companies in Missouri which serve more than 2 percent of the access lines on a nation-wide basis; and 7) SWBT should be given the opportunity to present evidence "that it should not be required to

provide 1+ intraLATA toll service until such time as it has authority to provide interLATA toll service.

SWBT proposed the following procedural schedule:

Simultaneous direct testimony	-	April 22, 1999
Simultaneous rebuttal testimony	-	May 27, 1999
Hearing memorandum	-	June 16, 1999
Hearing	-	June 21-25, 1999

On February 16, the Staff filed its response to the proposals of SWBT and of AT&T and MCI. Staff stated that "[i]t is not reasonable or prudent to require an immediate action by SWBT that will admittedly cause 'post-activation implementation issues' when such action can be avoided." Staff requested that the Commission adopt the procedural schedule proposed by SWBT with the modification that SWBT be required to file an intraLATA presubscription implementation plan with its Direct Testimony.

MCI and AT&T filed a joint response on February 17 and a supplement to that response on February 19. In their response, MCI and AT&T agree that the decision had not become final as of the date of those pleadings. However, they state that unless a motion for reconsideration is filed with the U.S. Supreme Court, the decision will become final on February 19.¹ MCI and AT&T state that the only rule which was invalidated by AT&T Corp. v. Iowa Utilities Bd. was

¹ According to U.S. Supreme Court Rule 45, the parties have 30 days in which to file a request for reconsideration. If no request is filed, then the decision becomes final. No request for reconsideration was filed and thus the decision was final on February 19, 1999.

Rule 319 dealing with the "necessary and impair standards" of Section 251(d)(2) of the Federal Telecommunications Act of 1996. MCI and AT&T state that there are no dialing parity issues on remand to the 8th Circuit and no stay order. They also argue that the dialing parity rules are not merely guidelines but that 47 CFR 51.211 states that a local exchange carrier (LEC) "must implement intraLATA and interLATA toll dialing parity throughout that state on February 8, 1999, or an earlier date as the state may determine. . ." Finally, MCI and AT&T argue that the only other LECs to which this dialing parity rule applies are GTE and Sprint, and the Commission has already ordered those companies to implement intraLATA presubscription.

The Commission has reviewed the proposed schedules, motion for declaratory ruling, and responses and finds that the FCC rules have been reinstated by the U.S. Supreme Court decision in AT&T Corp. v. Iowa Utilities Bd.; however, the Commission does not find it to be practical to order immediate implementation without a plan to address customer notice, the status of the PTC Plan, and any other post-activation implementation issues.

Therefore, the Commission adopts SWBT's proposed schedule with the modification requested by Staff, that SWBT file its implementation schedule along with its direct testimony. The Commission finds that the following conditions should be applied to the schedule:

(A) The Commission requires the prefiling of testimony as defined in 4 CSR 240-2.130. All parties shall comply with this rule, including the requirement that testimony be filed on line-numbered pages. The practice of prefiling testimony is designed to give

parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.

(B) Testimony and schedules shall not be filed under seal and treated as proprietary or highly confidential unless a protective order has first been established by the Commission. The party that considers information to be proprietary or highly confidential should request a protective order. Any testimony or schedule filed without a protective order first being established shall be considered public information.

(C) The parties shall file a hearing memorandum setting out the issues to be heard and the witnesses to appear on each day of the hearing and the order in which they shall be called, an appendix containing definitions of technical terms, each party's position on the disputed issues, and the order of cross-examination. The hearing memorandum will set forth the issues that are to be heard and decided by the Commission. Any issue not contained in the hearing memorandum will be viewed as uncontested and not requiring resolution by the Commission. Staff will be responsible for preparing and filing the hearing memorandum.

(D) The Commission emphasizes the importance of the deadline for filing the hearing memorandum. Commission Staff will be responsible for preparing and filing the hearing memorandum, and, unless the Commission orders otherwise, the hearing memorandum shall be filed on or before the date set. Each party is required to provide Staff with its position on each unresolved issue at least two business

days prior to the filing deadline for the hearing memorandum. Each party shall either present their signature element (a signed page), shall provide written authorization to permit the General Counsel to sign for that particular party, or shall be available to sign the final draft at the offices of the General Counsel prior to the filing deadline. A hearing memorandum which is not signed is considered noncompliant as to the party whose signature is missing and any party who fails or refuses to sign the final copy of the hearing memorandum is hereby ordered to file its own hearing memorandum, which follows the same numbering and topic outline, by the hearing memorandum filing date.

(E) The Commission's general policy provides for the filing of the transcript within two weeks after the hearing. If any party seeks to expedite the filing of the transcript, such request shall be tendered in writing to the regulatory law judge at least five days prior to the date of the hearing.

(F) All pleadings, briefs and amendments shall be filed in accordance with 4 CSR 240-2.080. The briefs to be submitted by the parties shall follow the same format established in the hearing memorandum. Initial briefs must set forth and cite the proper portions of the record concerning the remaining unresolved issues that are to be decided by the Commission.

(G) All parties are required to bring an adequate number of copies of exhibits which they intend to offer into evidence at the hearing. If an exhibit has been prefiled, only three copies of the exhibit are necessary for the court reporter. If an exhibit has not

been prefiled, the party offering it shall bring, in addition to the three copies for the court reporter, six copies for the bench, as well as copies for opposing counsel.

THEREFORE, IT IS ORDERED:

1. That the request to participate without intervention of the Telecommunications Resellers Association is granted.

2. That the Telecommunications Resellers Association's participation shall be limited to monitoring the proceedings and filing post-hearing briefs.

3. That Jackson County, Missouri is dismissed as a party to this case.

4. That the following procedural schedule is adopted:

IntraLATA presubscription implementation plan (SWBT)	-	April 22, 1999 3:00 p.m.
Simultaneous direct testimony	-	April 22, 1999 3:00 p.m.
Simultaneous rebuttal testimony	-	May 27, 1999 3:00 p.m.
Hearing memorandum	-	June 16, 1999
Hearing	-	June 21-25, 1999 9:00 a.m. (first day)

5. That this order shall become effective on March 16, 1999.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Nancy Dippell, Senior Regulatory
Law Judge, by delegation of
authority pursuant to 4 CSR
240-2.120(1) (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 3rd day of March, 1999.