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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 10th
day of February, 2000.

Southwestern Bell Telephone Company's)
Complaint Against Mid-Missouri Telephone)
Company for Blocking Southwestern Bell's) Case No. TC-2000-325
800 MaxiMizer Traffic and Request for an)
Order Requiring Mid-Missouri to Restore)
the Connection.)

Southwestern Bell Telephone Company's)
Complaint Against Goodman and Seneca)
Telephone Companies and Request for an) Case No. TC-2000-401
Order Prohibiting Them from Cutting Off)
Southwestern Bell's 800 MaxiMizer Traffic.)

Southwestern Bell Telephone Company's)
Complaint Against Chariton Valley)
Telephone Corporation and Request for an) Case No. TC-2000-402
Order Prohibiting Chariton Valley from)
Cutting Off Southwestern Bell's 800:)
MaxiMizer Traffic.)

**ORDER DENYING MOTIONS TO DISMISS COMPLAINT
AND SETTING EARLY PREHEARING CONFERENCE**

On November 10, 1999, Southwestern Bell Telephone Company (SWBT) filed a complaint against Mid-Missouri Telephone Company (Mid-Missouri). Subsequently, on December 30, 1999, SWBT filed separate complaints against Chariton Valley Telephone Corporation (Chariton Valley) and against Seneca and Goodman Telephone Companies (Seneca-Goodman). All three complaints allege that respondent phone companies have cut off

SWBT's 800 MaxiMizer traffic in violation of the Commission's Report and Order in Case No. TO-99-254. On February 1, 2000, the Commission consolidated SWBT's complaints against Mid-Missouri, Chariton Valley and Seneca-Goodman into a single case.

On November 17, Mid-Missouri filed a Motion to Dismiss Complaint. SWBT filed a response to that motion on November 30. Seneca-Goodman filed a Motion to Dismiss Complaint on January 20 and SWBT responded to that motion on January 31. Chariton Valley filed a Motion to Dismiss Complaint on January 10 and SWBT responded to that motion on January 26. Each of the three motions to dismiss allege that the respondent phone company is not in violation of the Commission's Report and Order in Case No. TO-99-254, the case that resulted in the elimination of the Primary Toll Carrier plan. Accordingly, each argues that SWBT has failed to state facts upon which relief can be granted and that, therefore, SWBT's complaint should be dismissed.

It is a general principle of law that when reviewing a motion to dismiss for failure to state sufficient facts to justify relief, a tribunal is to treat all facts pleaded as true. See. Smith v. King City School Dist., 990 SW 2d 643 (Mo. App. W.D. 1998). A review of the complaints filed by SWBT indicate that they do state facts which, if taken as true, would justify the granting of relief by the Commission. SWBT alleges that the respondent phone companies, by cutting off SWBT's 800 MaxiMizer traffic, violated the terms of the Commission's Report and Order in Case No. TO-98-254. 4 CSR 240-2.070(3) provides that formal complaints may be brought to the Commission for alleged violations of

"any rule or order or decision of the commission." Therefore, if SWBT's allegations are, for purposes of the motions to dismiss, accepted as true, those allegations do form the basis for a complaint to the Commission.

In their Motions to Dismiss the respondent phone companies assert that SWBT has misinterpreted the meaning and intent of the Commission's Report and Order in Case No. TO-99-254. They assert that they were within their rights in refusing to allow SWBT to originate MaxiMizer 800 calls in their exchanges. It is up to the Commission to determine whether SWBT or the respondent phone companies are correctly interpreting the Report and Order. The Commission will make that determination by hearing the complaints filed by SWBT.

In order that these complaints may be moved forward toward resolution, the parties will be directed to appear for an early prehearing conference for the purpose of developing and recommending a procedural schedule for the consideration of these complaints.

IT IS THEREFORE ORDERED:

1. That the Motion to Dismiss Complaint filed by Mid-Missouri Telephone Company in Case No. TC-2000-325 is denied.
2. That the Motion to Dismiss Complaint filed by Seneca Telephone Company and Goodman Telephone Company in Case No. TC-2000-401 is denied.
3. That the Motion to Dismiss Complaint filed by Chariton Valley Telephone Corporation in Case No. TC-2000-402 is denied.
4. That an early prehearing conference shall be held on February 23, 2000, beginning at 10:00 a.m. The prehearing conference shall be held at the Commission's offices on the fifth floor of the Harry S Truman

State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone wishing to attend who has special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the prehearing conference at: Consumer Services Hotline - 1-800-392-4211 or TDD Hotline - 1-800-829-7541.

5. That this order shall become effective on February 23, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, Schemenauer,
and Drainer, CC., concur
Crumpton, C., not participating

Woodruff, Regulatory Law Judge