

WLC-11

In the Matter of the Request of AT&T                     )  
Communications of the Southwest, Inc., to                ) **Case No. TO-99-615**  
Terminate Carrier of Last Resort Obligation.            )

**ORDER GRANTING INTERVENTION,**  
**SETTING A PREHEARING CONFERENCE,**  
**DIRECTING FILING OF PROCEDURAL SCHEDULE,**  
**RESOLVING DISCOVERY DISPUTE, AND**  
**NOTICE OF CHANGE OF JUDGE**

On June 29, 1999, AT&T Communications of the Southwest, Inc. (AT&T), filed a pleading requesting that the Commission terminate its obligation under Section 392.460, RSMo, to be the basic interexchange telecommunications services provider of last resort. Since that date, several applications to intervene have been filed, a discovery dispute has arisen, and this case has been reassigned to Deputy Chief Regulatory Law Judge Kevin A. Thompson.

### Intervention:

The Commission issued its Order and Notice on July 12, 1999, setting August 11, 1999, as the deadline for applications to intervene or to participate without intervention and for requests for a hearing.<sup>1</sup>

<sup>1</sup>The Commission also issued a Notice of Correction on July 21, 1999, to clarify that applications to intervene were due by August 11, 1999.

On July 9, 1999, the Mid-Missouri Group of Local Exchange Companies (MMG), consisting of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Mo-Kan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, filed an application to intervene and request for hearing. Also on that day, the Office of the Public Counsel (OPC) filed a request for hearing. On July 13, the Staff of the Missouri Public Service Commission filed its request for hearing.

On July 14, 1999, the Small Telephone Company Group (STCG), consisting of ALLTEL Missouri, Inc., BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Mark Twain Rural Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company, filed an application to

intervene and request for hearing. On July 21, 1999, ALLTEL Missouri, Inc., moved to withdraw its application to intervene. On July 23, 1999, Southwestern Bell Telephone Company (SWBT) filed an application to intervene. On August 10, 1999, GTE Midwest Incorporated (GTE Midwest) and GTE Communications Corporation (GTECC; jointly GTE) filed a joint application to participate without intervention.

The MMG asserts in its application that its members are all local exchange telecommunications companies and secondary carriers which serve customers in rural Missouri. MMG contends that its interest herein is different from that of the general public and that the public interest favors permitting it to intervene. MMG opposes AT&T's request. The STCG, likewise, consists of incumbent local exchange companies (ILECs) which provide basic local, local, and exchange access telecommunications services in Missouri. Like MMG, STCG contends that its interest herein differs from that of the general public and that the public interest favors its intervention. STCG also is apparently opposed to AT&T's request.

SWBT alleges that it is a local exchange telecommunications company and that it is obliged to provide carrier of last resort services to customers in its exchanges. SWBT asserts that its interest herein therefore differs from that of the general public and that the public interest favors its intervention. SWBT does not state whether it supports or opposes AT&T's request.

The Commission has reviewed the various applications to intervene and finds that they are in substantial compliance with Commission rules regarding intervention. Each proposed intervenor has an interest in this matter different from that of the general public and the public interest will indeed be best served by permitting these telecommunications companies to intervene. The Commission will grant the applications for intervention.

In addition to the applications to intervene disposed of above, GTE seeks to participate without intervention. GTE Midwest asserts that it is a basic local exchange carrier with carrier of last resort obligations to its own customers. GTECC asserts that it is a competitive telecommunications company which provides basic local and interexchange services in Missouri. GTE asserts that its interest herein is thus different from that of the general public and that the public interest favors its participation herein.

Commission Rule 4 CSR 240.075(5) authorizes participation without intervention and sets four requirements which an applicant for this status must meet. These requirements are different from the standards which apply to intervention. See Commission Rule 4 CSR 240-2.075(4). GTE meets the first and fourth requirements in that it has disclosed its interest in the proceeding and made a written request to participate. As to the second standard, GTE states that it is without sufficient information to make a full statement of the position it intends to take

in the proceeding. Finally, GTE makes no contentions which can be measured against the issues already presented.

Since GTE has made a showing sufficient to support full intervention, it is presumably sufficient to support the more limited degree of participation that GTE seeks, despite GTE's failure to directly address the requirements set out at Rule 4 CSR 240-2.075(5). Therefore, the Commission will grant GTE's application to participate without intervention. The degree of GTE's participation shall be taken up at the prehearing conference.

In accordance with its request of July 21, 1999, the Commission does not grant intervention to ALLTEL Missouri, Inc.

#### **Prehearing Conference and Proposed Procedural Schedule:**

Four requests for hearing have been filed and the statute under which AT&T seeks relief, Section 392.460, RSMo, requires a hearing. Therefore, an early prehearing conference will be scheduled to permit development of a procedural schedule that will move this matter to a prompt hearing. This will also afford the parties the opportunity to discuss, define, and possibly resolve the issues presented in this case. The Commission will also set a date for the filing of the proposed procedural schedule.

At the prehearing conference, the parties' representatives should be prepared to discuss the nature of any discovery each will conduct and the interval necessary for its completion; the number of witnesses each

expects to call at hearing; the number and nature of any exhibits each expects to offer at hearing; and the anticipated length of the hearing. The parties' representatives should also be prepared to discuss the current status of settlement negotiations. It is expected that the prehearing conference will provide an opportunity for the parties to further pursue settlement discussions.

Rule 4 CSR 240-2.075(6) provides that "[p]articipation shall be to the degree permitted by the presiding officer." At the prehearing conference, GTE shall be prepared to state succinctly the degree of participation it envisions and to justify the same. The parties' representatives shall be prepared to comment thereon.

The parties shall jointly file a proposed procedural schedule. The proposed procedural schedule shall establish dates for the prefiling of direct, rebuttal and surrebuttal testimony according to Commission rule, as well as a date for the filing of the issues list and position statements. The proposed procedural schedule shall also establish dates for the hearing of this matter.

**Discovery:**

On September 9, 1999, OPC filed motions to compel answers to data requests (DRs) directed at SWBT and GTE. OPC alleged that it had served the DRs on July 16, 1999, and states that both companies had thereafter timely objected to DRs 7 and 8.

GTE made identical objections to DRs 7 and 8:

GTE objects to this request on the ground it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Objecting further, GTE states that the request is unduly burdensome and onerous inasmuch as GTE, which is not even a party to this docket, must undertake a sufficient investment of time to identify documents or prepare documents in response to this request.

SWBT by letter of July 22, 1999, informed OPC that it would not respond to any of the DRs until such time as it was granted intervention and became a party in the case. SWBT further objected to DRs 7 and 8 as irrelevant.

In its motions to compel, OPC asserts that, pursuant to Section 386.450, RSMo, its authority to propound discovery to public utilities is not dependent on "the existence of an open case" or "whether or not the utility is a party to a case." On September 16, 1999, OPC filed its supplemental motion to compel directed at SWBT. Therein, OPC asks that the Commission compel responses to DRs 1 through 6. On October 4, 1999, SWBT notified the Commission that it had responded to DRs 1 through 6, thus mooting OPC's supplemental motion.

On September 20, 1999, SWBT timely filed its response to OPC's motion to compel; GTE filed its response out of time on September 23, 1999. The Commission will nonetheless consider the merits of GTE's response. SWBT asserts that Section 386.450, RSMo, does not authorize OPC to conduct discovery outside of the context of a Commission proceeding, or against utilities that are not parties. SWBT further

asserts that OPC has not even properly invoked the authority of the cited statute. GTE echoes SWBT's assertions and also points to the Commission's practice rules, at 4 CSR 240-2.090, which limit discovery to parties.

Section 386.450 provides:

At the request of the public counsel and upon good cause shown by him the commission shall require or on its own initiative the commission may require, by order served upon any corporation, person or public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate, of any books, accounts, papers or records kept by said corporation, person or public utility in any office or place within or without this state, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the public counsel when the order is issued at his request or by the commission or under its direction.

"In determining the meaning of a statute, the starting point is the plain language of the statute itself." Jones v. Director of Revenue, 981 S.W.2d 571, 574 (Mo. banc 1998); International Business Machines Corp. v. Director of Revenue, 958 S.W.2d 554, 557 (Mo. banc 1998). The plain language of Section 386.450, RSMo, does not include any condition that there be a pending proceeding or that the utility inquired of be a party to any proceeding. Indeed, according to the plain language of the statute, the entity inquired of need not be a utility at all--the language of the statute extends to "any corporation, person or public utility." Thus, the objections raised by SWBT and GTE as to the necessity of a pending proceeding and the restriction of inquiries to parties are seen to be without merit. Likewise, this statute is plainly



not conditioned on considerations of relevance under Rule 56.01(b)(1), Mo. R. Civ. Pro., made applicable to Commission proceedings by Section 536.073.2, RSMo Cum. Supp. 1998, and Commission Rule 4 CSR 240-2.090(1). Thus, the objections raised by GTE and SWBT as to relevance are without merit. Finally, GTE's observation regarding the Commission's discovery rule is correct, but is inapplicable to this situation. OPC is not seeking discovery under the Commission's rule, but under Section 386.450, RSMo.

However, as pointed out by SWBT and GTE, the statute does plainly state a precise manner of invocation with which OPC has not complied. But that is no real defect. By serving DRs upon GTE and SWBT, OPC merely took a shortcut. Upon the refusal of those companies to cooperate, OPC has now, by its motions of September 9 and September 16, 1999, requested an order of the Commission as the statute plainly specifies.

SWBT and GTE assert that OPC has not stated "good cause" such as is required to invoke the authority of Section 386.450, RSMo. That assertion is also without merit. DRs 7 and 8 relate to customer complaints and training for company customer service representatives. OPC states that, "as the representative of customers and the public, [OPC] has an interest in determining if customers are complaining or having problems with the implementation of 1+ presubscription, what these complaints are or what is the nature of the complaints." OPC further states that "ILECs have a unique and longstanding relationship with

customers and serve as a point of contact for customers to voice a complaint or seek redress of problems concerning any aspect of telephone service, whether or not the ILEC offers the specific service or product or has control over the situation." OPC has certainly shown good cause. GTE and SWBT must provide the information requested by OPC.

Finally, there is the issue of the manner of compliance the statute requires. Section 386.450, RSMo, does not require the compilation of information or the creation of an answer to a data request. It requires, rather, that records be made available for inspection at a time and place designated by the Commission, with the option that verified copies of the records may be supplied in lieu of an inspection. If GTE and SWBT continue to refuse to respond to OPC's DRs, then OPC must seek an order requiring the companies to produce the records necessary to answer the DRs at a designated time and place.

#### **Notice of Change of Regulatory Law Judge:**

The parties and participants herein are requested to take notice that, as of November 18, 1999, for reasons of internal caseload management, this matter was reassigned to Deputy Chief Regulatory Law Judge Kevin A. Thompson.

#### **IT IS THEREFORE ORDERED:**

1. That the Mid-Missouri Group of Local Exchange Companies, consisting of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company,

Mo-Kan Dial, Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, is granted intervention in this case in accordance with 4 CSR 240-2.075(4). The Records Room of the Commission shall add their counsel to the service list of this matter: Craig S. Johnson, Esq., Andereck, Evans, Milne, Peace & Baumhoer, 305 East McCarty Street, Hawthorn Center, Third Floor, P.O. Box 1438, Jefferson City, Missouri 65102.

2. That the Small Telephone Company Group (STCG), consisting of BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Mark Twain Rural Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company, is granted intervention in this case in accordance with 4 CSR 240-2.075(4). The Records Room of the Commission shall add their counsel to the service list of this matter: W.R. England, III, Esq., and Brian

T. McCartney, Esq., Brydon, Swearngen & England, P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102-0456.

3. That Southwestern Bell Telephone Company is granted intervention in this case in accordance with 4 CSR 240-2.075(4). The Records Room of the Commission shall add their counsel to the service list of this matter: Paul G. Lane, Esq., Leo J. Bub, Esq., Anthony K. Conroy, Esq., Katherine C. Swaller, Esq., Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, Missouri 63101.

4. That GTE Midwest Incorporated and GTE Communications Corporation are granted participation without intervention in this case in accordance with 4 CSR 240-2.075(5). The Records Room of the Commission shall add their counsel to the service list of this matter: Tracy Pagliara, Esq., GTE Midwest Incorporated & GTE Communications Corporation, 601 Monroe, Suite 304, Jefferson City, Missouri 65101.

5. That a prehearing conference shall be held on December 6, 1999, beginning at 10:00 a.m. The prehearing conference shall be held at the Commission's office 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.

6. That the parties shall file a proposed procedural schedule no later than December 13, 1999. The procedural schedule shall include dates for the filing of testimony and for a hearing.

7. That the Motions to Compel filed by the Office of the Public Counsel on September 9, 1999, are sustained.

8. That this order shall become effective on December 3, 1999.

**BY THE COMMISSION**



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

(S E A L)

Kevin A. Thompson, Deputy Chief 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 23rd day of November, 1999.

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION