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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 6th
day of August, 1998.

In the Matter of the Application of Suretel, Inc.)
for Approval of Resale Agreement Pursuant to) Case No. TO-98-548
Section 252(e) of the Telecommunications Act of)
1996 with Southwestern Bell Telephone Company.)
)

ORDER DENYING MOTION TO DISMISS APPLICATION

On July 23, 1998, the Staff of the Missouri Public Service Commission (Staff) filed a Motion to Dismiss Application alleging the proposed Resale Agreement between Suretel, Inc. (Suretel) and Southwestern Bell Telephone Company (SWBT), filed with the Commission for approval on June 4, was null. Staff alleged that by the terms of the agreement it became "null and no longer valid" if it was not filed within 30 days after both parties signed the agreement. Staff indicated it would be an inefficient use of the Commission's time and limited resources to review this Resale Agreement and that if Suretel and SWBT still wished to pursue a Resale Agreement they should submit a new application for Commission approval and re-start the 90-day review period.

On July 29, Suretel filed its response to Staff's Motion to Dismiss Application stating neither it nor SWBT agreed with Staff's interpretation of the terms of the proposed Resale Agreement. Suretel indicated the provision which contained the language regarding the 30-day filing requirement could be waived if both parties agreed to filing of the agreement more than 30 days after both companies signed the

agreement. Suretel stated this position was based on the phrase "Unless otherwise agreed" at the beginning of the provision in question. Suretel also submitted a July 27 letter signed by representatives of both companies stating that they agreed to be bound by the Resale Agreement if the Commission approved it and that both companies agreed that the filing of the Resale Agreement on June 4 did not render it null and no longer valid.

On July 31, Staff filed a reply to Suretel's response reiterating its belief that the proposed Resale Agreement was null and no longer valid when filed with the Commission later than 30 days after both parties had signed the agreement.

The Commission has reviewed Staff's motion, Suretel's response and Staff's reply and finds that Staff's Motion to Dismiss Application should be denied. Suretel's interpretation of the phrase "Unless otherwise agreed" is reasonable. Denial of the Motion to Dismiss Application also serves to avoid further delay in review of the proposed Resale Agreement. To avoid similar delay in the future, the parties should submit in advance any documentation they have concerning a waiver of a clause in the agreement that might appear to negate the agreement instead of waiting until after a problem has arisen as was done in the present case. Both Suretel and SWBT have demonstrated a willingness to be bound by the present Resale Agreement. To require them to file a new agreement would not be an efficient use of the Commission's or the parties' time or resources.

IT IS THEREFORE ORDERED:

1. That the Motion to Dismiss Application filed by the Staff of the Missouri Public Service Commission on July 23, 1998, is denied.

2. That the Staff Recommendation in this case remains due on August 13, 1998.

3. That this order shall become effective on August 18, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray
and Schemenauer, CC., Concur.
Crompton, C., absent.

Harper, Regulatory Law Judge