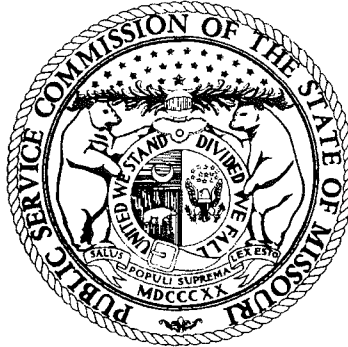


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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



MCI Telecommunications Corporation,
Inc. *et al.*,

Complainants,

vs.

Southwestern Bell Telephone
Company, Inc.,

Respondent.

CASE NO. TC-97-303

REPORT AND ORDER

Issue Date: September 16, 1997

Effective Date: September 26, 1997

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

MCI Telecommunications Corporation,)	
Inc. et al.,)	
)	
Complainants,)	
)	
vs.)	<u>CASE NO. TC-97-303</u>
)	
Southwestern Bell Telephone)	
Company, Inc.,)	
)	
Respondent.)	

APPEARANCES

Carl J. Lumley and Leland B. Curtis, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105, for MCI Telecommunications Corporation.

Paul S. DeFord, Lathrop & Gage L.C., 2345 Grand Boulevard, Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

Mark W. Comley, Newman, Comley & Ruth, 205 East Capitol Avenue, P.O. Box 537, Jefferson City, Missouri 65102, for WorldCom, Inc.; Dial U.S.; Valu Line of St. Joseph, Inc.; LDD, Inc.; CGI; and Consolidated Communications Telecom Services, Inc.

Paul G. Lane, Southwestern Bell Telephone Company, 100 North Tucker, Room 630, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Mark Johnson, Sommenschein Nath & Rosenthal, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111, for Kansas City Fiber Network, L.P.; Birch Telecom of Missouri, Inc.

Ronald Molteni and Mark E. Long, Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102, for the State of Missouri.

Martha Hogerty, Office of the Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and for the public.

Penny G. Baker, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: Dale Hardy Roberts, Chief.

Table of Contents

I.	Procedural History	2
II.	Discussion	5
III.	Summary	12
IV.	Conclusions of Law	15
V.	Ordered Paragraphs	17

REPORT AND ORDER

I. Procedural History

On February 6, 1997, MCI Telecommunications Corporation, Inc. (MCI) and a number of other interexchange telecommunications companies¹ filed a complaint against Southwestern Bell Telephone Company (SWBT) alleging that SWBT's intrastate switched access rates are excessive and should be reduced. Notice of the complaint was issued by the Commission and an answer was filed on March 28. On April 7 MCI *et al.* filed an amended complaint.

¹MCI Telecommunications Corporation, Inc., MCImetro Access Transmission Services, Inc., Teleconnect Long Distance Services & Systems Company, Inc., AT&T Communications of the Southwest, Inc., Metropolitan Fiber Systems of Kansas City, L.P., MFS Intelenet of Missouri, Inc., WorldCom, Inc., Communications Cable-Laying Company d/b/a Dial U.S., Valu-Line of St. Joseph, Inc., LDD, Inc., CommuniGroup of K.C., Inc., Kansas City Fiber Network, L.P., North American Communications Group, Inc., American Tel Group, Inc., MVP Communications, Inc., New Century Telecom, Inc., NOS Communications, Inc., NOSVA, Limited Partnership, Affinity Network, Incorporated, America's Tele-Network Corp., IXC Long Distance, Inc., Nations Bell, Inc. d/b/a Nations Tel., Coastal Telecom Limited Company, Telegroup, Inc., Wright Businesses, Inc. d/b/a Long Distance Management, Inc., QCC, Inc., ActiveTel L.D., Inc., Maxcom, Inc., Consolidated Communications Telecom Services, Inc., and Dial and Save of Missouri, Inc., hereinafter referred to collectively as "MCI *et al.*" or "Complainants."

The Commission's rule on complaints requires that, upon the filing of a complaint, notice of such complaint shall be filed upon the respondent and the respondent shall file an answer within 30 days. See 4 CSR 240-2.070(7). The purpose of the notice provision of the rule is to ensure that the respondent has formal notification of the complaint. The notice also serves to begin the time period within which an answer must be filed. The respondent had already been served with the complaint and had filed an answer in response to the initial complaint.

The complainants filed a certificate of service which verified that a copy of the amended complaint had been mailed by prepaid first class mail to the respondent. Ten days later, on April 17, the respondent filed its answer to the amended complaint. This confirms that the respondent received the amended complaint and although the respondent complained at the hearing that no formal notice of an amended complaint had been delivered to it, the respondent would now be *estopped* to deny receipt of the amended complaint. SWBT has also alleged that the Commission has not authorized the amended complaint pursuant to 4 CSR 240-2.080(14). It is not clear from the rule cited that Commission authorization is required. That question will remain for another day as this procedure is not dispositive of the complaint filed herein.

Numerous applications were filed requesting intervention in this case and an order disposing of those applications has not been necessary. The Commission received motions to allow cross complaints, motions to expand the scope, motions to dismiss, and a variety of other motions and responses thereto. The Commission determined that those pleadings and motions should be heard prior to considering the necessity of a procedural schedule or an evidentiary hearing.

On July 15 the Commission issued an Order Setting Motions Hearing so that the Commission might entertain oral argument on whether there was jurisdiction to proceed with this complaint case. The Commission specifically deferred ruling upon the numerous applications to intervene and instead granted each entity which had applications for intervention pending the opportunity to make a special appearance and participate at the motions hearing without intervention. On July 29 the Commission convened the motions hearing. At that hearing, the Commission first took up SWBT's motion to dismiss and the issue of the complainants' standing or lack thereof and after hearing from SWBT every party present was offered the opportunity to respond to SWBT's motion and argument.

Subsequently, the Commission took up the motions of the various complainants regarding their requests to expand the scope of this proceeding along with any other pending motions and then heard SWBT's response to the complainants' motions and arguments. The Commission provided for initial briefs and on August 15 post-hearing briefs were filed by MCI, the Office of the Public Counsel (Public Counsel), the Office of the Attorney General (Attorney General), the Staff of the Missouri Public Service Commission (Staff), AT&T Communications of the Southwest, Inc. (AT&T) and SWBT.

On September 5 MCI filed a Supplement to Introduction Section of Complainants' Brief filed on August 15. This filing was out of time and no leave to supplement the briefs was sought. On September 8 SWBT filed its Motion to Strike Complainants' Supplement to Introduction of Complainants' Brief Filed. SWBT's motion will be granted.

II. Discussion

The complaint states that SWBT's intrastate switched access rates were last set by this Commission in 1994 and that the Commission had not required a cost study to assess the reasonableness of those rates at that time. The complaint claims that SWBT's intrastate switched access minutes of use, and resulting revenues from its intrastate switched access services, have increased and that an amount of excess profits above the cost to provide the service has grown commensurate with the increased minutes of use. The complaint then concludes that SWBT's existing intrastate rate design is unjust, unreasonable and unlawful and that the Commission should reduce SWBT's intrastate switched exchange access charges in relationship to their direct economic costs before SWBT is permitted to provide in-region long-distance service in Missouri pursuant the Telecommunications Act of 1996.²

The Commission would not be acting in the interest of judicial economy to convene an evidentiary hearing on the substantive allegations raised by the complaint if the Commission lacks jurisdiction to proceed or if the Commission finds other statutory barriers to hearing and resolving the complaint. The initial inquiry at the motions hearing was whether an individual entity, such as MCI, may properly file a complaint of this type. If not, the Commission must consider whether MCI and its co-complainants constitute 25 or more proper parties. If MCI and the co-complainants qualify as proper parties, the Commission may proceed to the next step. However, if they do not, the Commission must then address whether Public Counsel's motion in this case constituted a formal complaint of the Public Counsel and thus conferred jurisdiction where none previously existed. If

²47 U.S.C. § 271.

the Commission finds either that there were sufficient co-complainants or that Public Counsel's motion constituted a formal complaint then the Commission must next consider whether addressing the substance of the complaint would constitute "single-issue ratemaking" as prohibited both by statute and by common law interpretation thereof.³

(A) Section 386.390

SWBT's first argument was based upon Section 386.390.1 RSMo⁴ which states in pertinent part that a complaint may be filed setting forth any act or thing done or omitted to be done or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission; provided that no complaint shall be entertained as to the reasonableness of any rates unless signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than 25 consumers or purchasers, or prospective consumers or purchasers. This section has been interpreted by the Commission to mean that "anyone may petition for reasonable and necessary relief *except as to rates.*" Cole v. Ft. Scott & Nevada Light, Etc., Co., 1 Mo.P.S.C. 130; 138, (1913) (emphasis added.)

The complaint filed in this case may not be filed by a single entity such as MCI. Section 386.390 and section 386.400, taken together,

³Single-issue ratemaking is unlawful pursuant to the court's holding in State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41 (Mo. Banc 1979) hereafter "UCCM"; State ex rel. Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 806, 812 (Mo. App. 1993). These cases interpret Section 392.240.

⁴All statutory citations are to Revised Statutes of Missouri, 1994, unless otherwise noted.

provide for complaints by public utilities concerning violations or claimed violations of any provision of law, or of any rule or order or decision of the Commission. There is no allegation by the complainants of a violation of law or of a violation of rule or order or decision of the Commission. Therefore, if complainants are attempting to assert standing of a single entity under these provisions, they have failed to state a claim for which this Commission can grant relief thereunder. The complainants have not invoked the Commission's jurisdiction under these provisions because the subject of the complaint is not one contemplated by the statutory language.

There are only two remaining possibilities for concluding that this complaint was filed by the proper party(ies). Section 386.390 provides for complaints as to the reasonableness of a rate or charge. However, the language is clear that a complaint as to the reasonableness of rates charged by a utility may be entertained by the Commission only upon its own motion unless the complaint is signed by the public counsel or appropriate representative of any municipality within which the alleged violation occurred, or not less than 25 consumers or purchasers, or prospective consumers or purchasers. There are no complainants which represent any municipality. Therefore, the Commission must determine whether the complaint was filed either by Public Counsel or a group of 25 or more purchasers or prospective purchasers.

This complaint was not filed by the Public Counsel, but Public Counsel has actively taken part subsequent to the filing of the complaint. It is clear that Public Counsel's participation in this case should not be viewed in the same light as a complaint filed by Public Counsel. Under direct questioning on the issue, Public Counsel confirmed that this is not a complaint filed by the Public Counsel but rather is one in which the

Public Counsel has chosen to participate. In fact, Chair Zobrist⁵ asked the Public Counsel:

Ms. Hogerty, are you saying that your March 18th motion which requests that the scope be expanded and that the investigation/audit be expedited, that this is tantamount to a complaint under 386.390?

Public Counsel responded "I don't know if technically it is because I have not actually filed a separate complaint. So I can't say that it is."

Later in the hearing, Commissioner Murray asked Public Counsel:

Did you ask the Commission to order its staff to do that against Southwestern Bell in this instance prior to joining in on this?

Public Counsel answered "No. No, I have not. And I actually haven't joined this complaint." Public Counsel itself does not assert that its participation herein constitutes a complaint filed by Public Counsel pursuant to Section 386.390.1. Therefore, in order for the complaint to clear the preliminary filing requirement, it must be established that 25 or more purchasers or potential purchasers of the respondent have filed this complaint.

In the initial filing, MCI appeared to be joined by 28 co-complainants. Thereafter, a number of parties appear to have been added in the April 7 amended complaint. The Amended Complaint appears to have been filed by MCI and 31 co-complainants. Although this number exceeds the minimum requirement of 25 complainants, a number of these co-complainants are not purchasers of SWBT at this time and there is little authority to establish what constitutes a "potential" purchaser. SWBT has noted that only 13 of the complainants have ever purchased any intrastate switched

⁵At the time of the July 29 hearing, Karl Zobrist was the Chair of the Commission. Since that time, Chair Zobrist resigned from the Commission and the concurrences to this order will reflect that Sheila Lumpe is now the Chair of the Commission.

access service from SWBT, leaving 19 complainants who have never purchased intrastate access service from SWBT. SWBT has alleged that those companies who have never purchased intrastate access services do not constitute prospective purchasers. It is not entirely clear what constitutes a prospective purchaser and without citing any authority the parties have left this issue to be determined by the Commission. The Commission has determined that it need not answer that question in order to dispose of this case.

However, the record has shown that one complainant, Wright Business, Inc., is not even certificated to provide telecommunications services within the State of Missouri. Another, North American Communications Group, Inc., holds no certificate although North American Communications Corporation does. If these two are one and the same then this corporation should both litigate and do business under the same name. If these are two separate entities then this complainant, too, holds no certificate to provide telecommunications services in the State of Missouri. It would be tenuous to grant prospective purchaser status to a complainant who has never been certificated by this Commission to provide services within the State of Missouri.

Furthermore, in the Commission's Order Setting Motions Hearing, ordered paragraph number one stated: "That all parties to this case shall appear to argue those motions which are now pending in this docket on July 29, 1997, at 1:30 p.m. in Room 520B of the Commission's offices in the Harry S Truman Building". Although ordered to appear, 10 of the 32 parties failed to do so. The absent complainants did not seek leave of the Commission to be excused from the hearing nor did they arrange to have anyone else appear on their behalf. Vice-Chair Drainer made repeated inquiries to ensure that none of those counsel who did appear did so as co-

counsel or local counsel for the absent parties. Although the complainants may have been in communication with each other it was evident that ten of the complainants had failed to request leave to be absent and had failed to appear as ordered. Failure to appear at a hearing without previously having secured a continuance shall constitute grounds for dismissal of the party's complaint or of the party. See 4 CSR 240-2.110(4)(B).

Those companies which failed to appear were (1) Metropolitan Fiber Systems of Kansas City L.P., (2) MFS Intelenet of Missouri, Inc., (3) Metropolitan Fiber Systems of St. Louis, Missouri, Inc., (4) MVP Communications, Inc., (5) New Century Telecom, Inc., (6) NOS Communications, Inc., (7) NOSVA, Limited Partnership, (8) Affinity Network, Inc., (9) America's Tele-Network Corp., and (10) Dial & Save of Missouri, Inc. The absence of these co-complainants brings the number of complainants below the minimum number of 25.

The Commission must conclude that this complaint as to the reasonableness of SWBT's rates was not filed by a party who has standing to file such a complaint under section 386.390.

Assuming, *arguendo*, that the Commission had determined this complaint to be filed by the proper parties, the Commission would then look at those issues which may be complained of under this statute.

As stated earlier Section 386.390 provides for complaints as to the lawfulness or reasonableness of a rate or charge. Inasmuch as SWBT's access rates constitute the crux of the complaint, it must be noted that there is no allegation by the complainants of a violation of law, rule, order or decision of the Commission on the part of SWBT. If MCI *et al.* are complaining as to the reasonableness of the rates that SWBT is charging the record reflects that SWBT is charging the rate authorized, found previously to be reasonable and subsequently required by Commission order.

(B) 392.400

The Commission has previously found and concludes again that Section 392.400 addresses the enforcement by the Commission of the segregation of noncompetitive services from transitionally competitive or competitive services. The complainants in this case have made no allegation that SWBT's intrastate switched access services are subsidizing SWBT's transitionally competitive or competitive services. Section 392.400.6 only permits complaints that a company's noncompetitive services are subsidizing its competitive or transitionally competitive services and the complainants have failed to state such a claim. Complainants have made no allegation of subsidization. The complaint simply fails to state a claim upon which relief may be granted.

(C) Single-issue Ratemaking

Setting aside the various technical pleading or procedural irregularities of the complaint, the Commission turns its attention to the concern over single-issue ratemaking. The term "single-issue ratemaking" is essentially a shorthand method of referring to the requirement that all relevant factors must be considered. Ratemaking is a balancing process, which focuses on a number of factors such as the rate of return the utility has an opportunity to earn, the rate base upon which a return may be earned, the depreciation costs of plant and equipment, and allowable operating expenses. Union Electric Co. v. Public Serv. Comm'n, 765 S.W.2d 618, 622 (Mo. App. 1988). [W]hether the rates in effect at any given time are just and reasonable depends upon many facts and can only be determined after rather extended investigation and study." State ex rel. Laclede Gas Co. v. P.S.C., 535 S.W.2d 561, 570 (Mo. App. 1976). The Commission must "match" the revenue/expense/rate base relationship. The Staff of the

Missouri Public Serv. Comm'n v. Southwestern Bell Telephone Co., 2 Mo. P.S.C. 3d 479, 486-87, 544-45 (1993). The effect of one component of the relationship may be offset by another component. See, e.g., Id. at 544-45.

SWBT has asserted that the prohibition against single-issue ratemaking is based on the absence of statutory authority to set rates based upon single factors. Section 392.240 requires the Commission to consider all relevant factors when determining a rate. Indeed, the court has held that while the Commission has the authority to investigate rates, it does not have the authority to look at only a single factor in permitting those rates to be adjusted. UCCM at 56.

Complainants stated in paragraph 40 of their amended complaint that "SWBT's total earnings are unreasonable and should be decreased by the access charge reductions proposed by complainants." However, it is clear that this is a complaint over one single rate. Complainants do not ask that the rates be restructured *in toto* but ask only that this one rate be reduced.

Pursuant to 4 CSR 240-2.070(5) the complaint shall state the nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner. The only clear and concise issue raised within the complaint is the issue of SWBT's access rates. The prohibition against single-issue ratemaking raises a bar against the Commission's ability to proceed with the complaint as pleaded.

III. Summary

Finally, the Commission turns its attention to the motion to dismiss and the issue as to whether there exists the necessity of an evidentiary hearing. One of the complainants framed its comments at the motions hearing in the context of a hearing for judgment on the pleadings

or, in the alternative, a dismissal for failure to state a claim upon which relief can be granted. The Commission will not view it as a motion for judgment on the pleadings.

The Commission treats this as a Motion to Dismiss pursuant to 4 CSR 240-2.070(6). This rule is similar to, if not based upon, Rule 55.27(6) "failure to state a claim upon which relief can be granted." A motion to dismiss for failure to state a claim upon which relief can be granted attacks the legal sufficiency of the petition by claiming that, even if the facts in the pleading are true, the facts do not constitute legal grounds for any relief.⁶ In considering a motion to dismiss the Commission must accept as true all well-pleaded factual allegations of the petition.⁷

The parties to this case offered argument at the motions hearing as to what constituted a fact versus a legal conclusion. The Commission must make its conclusions of law in order to dispose of the motions which are now before it. As the U. S. Supreme Court has observed: "The court has previously noted the vexing nature of the distinction between questions of fact and questions of law . . . nor do we yet know of any . . . rule or principle that will unerringly distinguish a factual finding from a legal conclusion". Pullman-Standard Co. v. Swint, 456 U.S. 273, 288(1982). For example, the classification of a prospective purchaser may require some factual evidence but in some instances a conclusion of law must define that term before the facts may be reviewed to consider whether they meet the necessary standard. The Commission has discussed that particular distinction elsewhere in this order.

⁶ Black's Law Dictionary, p. 520 (rev. 4th ed. 1968).

⁷ Hon Inc. v. The Board of Regents Central Mo. State Univ., 678 S.W.2d 413, 414 (Mo.App. 1984).

The purpose of a motion to dismiss is to expedite litigation and lies in the interest of judicial economy. Motions to dismiss may relieve this forum from hearing cases for which there is no remedy within the jurisdiction of the Commission and for which no relief may be granted.

This complaint may not be treated as if filed as a complaint by the Office of the Public Counsel. This has been made clear by Public Counsel's own comments at the motions hearing. Neither may this complaint be treated as if it were filed by 25 purchasers or potential purchasers. The record at the hearing suggests that only 13 of the complainants have actually purchased switched access service from SWBT which leaves the complainants to rely on the meaning of "potential purchaser". Of those potential purchasers, it is clear to the Commission that one, possibly two, of them are not yet certificated to provide telecommunications services within the State of Missouri and therefore they could not be potential purchasers of SWBT's switched access services within Missouri. Irrespective of the definition of a potential purchaser, only 22 complainants appeared for the hearing and this number also fails to meet the statutory minimum.

The complainants have not alleged any "thing or act done or omitted to be done" by SWBT in violation of any provision of law or rule or order or decision of the Commission. Although the complainants have stated that SWBT's access rates are excessive, SWBT is, in fact, charging an access rate which has been previously ordered by the Commission.

If, *arguendo*, the complainants were able to correct every pleading deficiency in this case, they would still face the absolute prohibition against single-issue ratemaking. The Commission concludes it must dismiss this case as an attempt to bring before it a single-issue ratemaking decision.

IV. The Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

Southwestern Bell Telephone Company is a regulated telecommunications company pursuant to Section 386.020 and is therefore subject to the jurisdiction of the Missouri Public Service Commission.

Section 386.390.1 provides jurisdiction for the Commission to hear complaints regarding any thing or act done by a telecommunications company in violation of any provision of law, rule, order or decision of the Commission.

The complaint fails to set forth any act or thing done or omitted to be done or claimed to be in violation of any act or any provision of law, rule, order or decision of the Commission.

Section 386.390.1 provides jurisdiction for the Commission to hear complaints regarding the reasonableness of rates of a telephone corporation *only if* signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than 25 consumers or purchasers, or prospective consumers or purchasers, of such telephone service. The complaint is not signed by the proper parties.

Although the complaint purports to be filed by more than 25 consumers or purchasers or prospective consumers or purchasers, the number of proper complainants is in fact less than 25.

A telecommunications business which has neither sought nor received the necessary authority to conduct business in Missouri could not constitute a prospective purchaser or prospective consumer as contemplated by section 386.390.1. Therefore one, possibly two, of the complainants

cannot be considered to be consumers or purchasers or prospective consumers or purchasers for purposes of this statute.

The failure of a party to appear when specifically ordered to do so is cause for that party's dismissal pursuant to 4 CSR 240-2.110(4)(B). Therefore, ten of the original complainants will be dismissed for failure to appear.

Neither section 392.200.1 nor 386.330.2 authorizes a complaint as to the reasonableness of rates. Therefore, neither section 386.390, 392.200 nor 386.330 provide standing for the complainants in this case to sustain a complaint based upon reasonableness of rates.

Section 392.400 authorizes complaints regarding alleged subsidization from a non-competitive service to a competitive or transitionally competitive service. Neither the complaint nor the amended complaint is based upon a claim that SWBT's non-competitive services are subsidizing its competitive or transitionally competitive services.

Section 392.240 requires the Commission to consider all relevant factors when determining a rate. Failure to do so has been designated by the courts as single-issue ratemaking and is impermissible pursuant to the court's holding in State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41 (Mo. Banc 1979) and State ex rel. Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 806, (Mo. App. 1993). The process advocated by the complainants herein would constitute a violation of the single-issue ratemaking prohibition.

The complaint filed herein fails to state a claim upon which relief can be granted and may therefore be dismissed pursuant to 4 CSR 240-2.070(6)

The Commission may sustain a motion to dismiss where the complainant has failed to show that genuine justiciable issues of fact exist.

IT IS THEREFORE ORDERED:

1. That the complaint is dismissed for failure to state a claim upon which relief may be granted.

2. That the complaint filed in this case against Southwestern Bell Telephone Company is dismissed for seeking an action which violates the prohibition against single-issue ratemaking.

3. That those complainants which failed to appear, as ordered, for the motions hearing on July 29, 1997, are hereby dismissed pursuant to 4 CSR 240-2.110(4)(B). Those complainants are Metropolitan Fiber Systems of Kansas City L.P., MFS Intelenet of Missouri, Inc., Metropolitan Fiber Systems of St. Louis, Missouri, Inc., MVP Communications, Inc., New Century Telecom, Inc., NOS Communications, Inc., NOSVA, Limited Partnership, Affinity Network, Inc., America's Tele-Network Corp., and Dial & Save of Missouri, Inc.

4. That the complaint is dismissed for failing to meet the statutory requirement of being filed by the proper parties.

5. That the Commission will grant the September 8, 1997, motion of Southwestern Bell Telephone Company to Strike Complainants' Supplement to Introduction of Complainants' Brief.

6. That all motions not previously ruled upon by the Commission in this case are hereby denied and all objections not previously ruled upon are hereby overruled.

7. That all pending applications to intervene are hereby denied and dismissed as moot.

8. That this order shall be effective on September 26, 1997.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Cecil I. Wright", with a stylized flourish at the end.

**Cecil I. Wright
Executive Secretary**

(S E A L)

Lumpe, Ch., Crumpton, Drainer
and Murray, CC., concur and
certify compliance with the
provisions of Section 536.080,
RSMo 1994.

Dated at Jefferson City, Missouri,
on this 16th day of September, 1997.