

JAMES M. FISCHER, P.C.

ATTORNEY AT LAW
REGULATORY CONSULTANT

101 WEST McCARTY, SUITE 215
JEFFERSON CITY, MO 65101

TELEPHONE (573) 636-6758
FAX (573) 636-0383

December 10, 1998

FILED

DEC 10 1998

Missouri Public
Service Commission

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

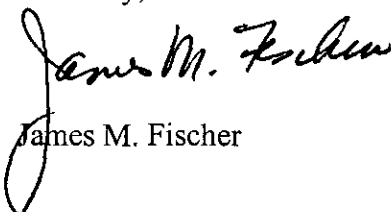
RE: *Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long
Distance, Case No. TA-99-47*

Dear Mr. Roberts:

Enclosed are the original and fourteen (14) copies of Southwestern Bell Long Distance's Response to the Office of the Public Counsel's Motion to Stay Proceeding, or in the Alternative, Motion to Dismiss for filing in the above-referenced matter. A copy of the foregoing Response has been hand-delivered or mailed this date to parties of Record.

Thank you for your attention to this matter.

Sincerely,



James M. Fischer

/jr
Enclosures

cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

DEC 10 1998

Missouri Public
Service Commission

In the matter of the application of)
Southwestern Bell Communications Services,)
Inc., d/b/a Southwestern Bell Long Distance) Case No. TA-99-47
for a Certificate of Service Authority to)
provide Interexchange Telecommunications)
Services within the State of Missouri.)

**SOUTHWESTERN BELL LONG DISTANCE'S
RESPONSE TO THE OFFICE OF THE PUBLIC COUNSEL'S
MOTION TO STAY PROCEEDING, OR IN THE ALTERNATIVE,
MOTION TO DISMISS**

COMES NOW Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance ("SBLD"), and in response to the Office of the Public Counsel's Motion to Stay Proceeding, or in the Alternative, Motion to Dismiss, states as follows:

1. On December 1, 1998, the Office of the Public Counsel ("Public Counsel") filed its Motion to Stay Proceeding, or in the Alternative, Motion to Dismiss. Public Counsel argued that it is premature to develop a procedural schedule and establish filing deadlines for this certificate proceeding pending final action by the Federal Communications Commission ("FCC") on Southwestern Bell Telephone Company's ("SWBT") Application for Authorization to Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996. In support of its Motion, Public Counsel argued that the Commission had no authority to issue a "contingent" certificate, as requested by SBLD, and that SBLD's Application is therefore a "legal impossibility." (See Public Counsel Motion, pp. 1-2).

2. Contrary to the suggestions of Public Counsel, the Commission has the clear statutory authority to place conditions upon the grant of a Certificate of Service Authority. Section 392.470, RSMo 1994, expressly states:

The commission may impose any condition or conditions that it deems reasonable and necessary upon any company providing telecommunications service if such conditions are in the public interest and consistent with the purposes of this chapter

In the recent past, the Commission has often exercised this statutory authority by placing numerous conditions upon the grant of a Certificate of Service Authority to interexchange carriers.¹

3. Since the Commission has the statutory authority to place reasonable conditions upon SBLD, SBLD's Application is not a "legal impossibility," as argued by Public Counsel. The Certificate of Service Authority requested by SBLD in this proceeding would be expressly conditioned upon federal authority to provide in-region, interLATA services.² This proceeding is

¹The Commission routinely conditioned certificates of service authority upon seven (7) standard conditions that required the Applicants to: (1) comply with reasonable requests by Staff for financial and operating data; (2) file tariffs; (3) not unjustly discriminate between customers; (4) comply with all applicable rules of the Commission; (5) file a Missouri-specific annual report; (6) comply with jurisdictional reporting requirements; and (7) submit to Staff a jurisdictional report provided to local exchange carriers. *See, e.g., Order Approving Interexchange Certificate of Service Authority and Approving Tariff, Re: Citizens Telecommunications Company d/b/a Citizens Telecom*, Case No. TA-96-267 (April 2, 1996); *Re: Cellnet Telecommunications of Michigan d/b/a/ C-Net Communications*, Case No. TA-96-302 (May 10, 1996); *Re: Brittan Communications International*, Case No. TA-96-311 (May 27, 1996); *Re: Communications Systems Development Company*, Case No. TA-96-413 (July 12, 1996); and *Re: Access Network Services, Inc.*, Case No. TA-96-120 (December 1, 1995).

²The Oklahoma Corporation Commission and the Kansas Corporation Commission have followed similar approaches by granting SBLD a certificate of convenience and authority, contingent upon SBC Communications, Inc. obtaining authority from the FCC to provide interLATA service. *See Final Order Granting Certificate of Public Convenience and Necessity Authorizing Southwestern Bell Communications Services, Inc. to Furnish IntraLATA and InterLATA Interexchange Telecommunications Services Throughout the State of Oklahoma, Re: Southwestern Bell Communications Services, Inc. for A Certificate of Public Convenience and Necessity to Provide Interexchange Services Within the State of Oklahoma*, Cause No. PUD 970000114 (May 22, 1997); *Order and Certificate, Re: Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance, for a Certificate of Convenience and Authority to Transact the Business of An Interexchange Services and Operator Services Provider Within the State of Kansas and for Approval of Its Initial Tariff*, Docket No. SBIC-585-COC (June 27, 1997). (Attached hereto

also intended to resolve expeditiously any issues related to SBLD's tariff and other ministerial or statutory requirements related to interexchange certification. Such resolution will allow SBLD to commence providing competitive Interexchange Telecommunications Services within Missouri as soon as practicable, when SBLD is permitted to provide in-region, interLATA services by federal law.

4. SBLD must respectfully oppose Public Counsel's request to dismiss or stay the proceeding pending final action by the FCC on Southwestern Bell's 271 Application. Public Counsel's approach would unnecessarily delay SBLD's ability to provide in-region, interLATA service in Missouri after federal approval has been obtained. As a result, it would delay the significant benefits to consumers in Missouri from increased competition, such as lower price and more service options. More specifically, Public Counsel's approach would require the Commission to delay reviewing issues related to SBLD's tariffs,³ or other statutory or ministerial issues, if any, until after the FCC has finally acted on SWBT's request for interLATA authority. This approach would build into the schedule an unnecessary delay to deal with largely ministerial actions of the Commission. If there are legitimate issues related to Missouri law or public policy to be addressed in the certificate proceeding, then the Public Counsel's approach would also postpone the Commission's ability to resolve them until after the FCC finally acts. In addition, Public Counsel's approach could result in the ability of SBLD's competitors to attempt to re-litigate issues previously heard in **Re: Southwestern Bell Telephone Company to Provide Notice of Intent to File An**

as Ex. Nos. 1 and 2).

³SBLD has already been working with the Commission Staff to resolve any concerns related to SBLD's illustrative tariff. It is SBLD's understanding that the illustrative tariff, as modified, is acceptable to the Commission's Telecommunications Department.

Application for Authorization to Provide In-Region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227 (hereinafter referred to as the “SWBT 271 Proceeding”).

5. In light of Public Counsel’s concerns, however, SBLD is willing to briefly delay the adoption of a procedural schedule until the conclusion of hearings before this Commission in the pending SWBT 271 Proceeding. Following the conclusion of the hearings in the SWBT 271 Proceeding, the Commission could proceed expeditiously to resolve any remaining issues in the certificate proceeding, and grant SBLD a certificate of service authority conditioned upon federal authority to provide in-region, interLATA service. This approach would permit the Commission to act on the certificate request during the period between the conclusion of the hearings in the SWBT 271 Proceeding, and a final order from the FCC granting authority to provide the interLATA services. This approach would eliminate the delays associated with Public Counsel’s approach, but also ensure that the Commission Staff, Public Counsel, and other parties have the opportunity to complete hearings in the SWBT 271 Proceeding before the Commission grants SBLD a conditional certificate of service authority.

WHEREFORE, Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance respectfully requests that the Commission deny the Office of the Public Counsel’s Motion to Stay Proceeding, or in the Alternative, Motion to Dismiss. However, SBLD will not oppose a brief delay in the adoption of the procedural schedule in this proceeding while the

Commission hears the issues in the pending SWBT 271 Proceeding in Case No. TO-99-227. SBLD would respectfully request that the proceeding be held in abeyance only until the conclusion of hearings in the pending SWBT 271 Proceeding.

Respectfully submitted,



James M. Fischer Mo. Bar No. 27543
Attorney at Law
101 West McCarty Street, Suite 215
Jefferson City, Missouri 65101
Telephone: (573) 636-6758
Fax: (573) 636-0383

Christopher L. Rasmussen
Senior Counsel
5850 West Los Positas Boulevard
Pleasanton, California 94588
Telephone: (925) 468-5288
Fax: (925) 468-4626

ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, postage prepaid, this 10th day of December, 1998, to:

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Paul S. DeFord
Lathrop & Gage, L.C.
2345 Grand Boulevard
Kansas City, MO 64108-2684

William D. Steinmeier
Mary Ann (Garr) Young
2031 Tower Drive
Jefferson City, MO 65109

Mark M. Comley
Newman, Comley & Ruth
601 Monroe St., Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537

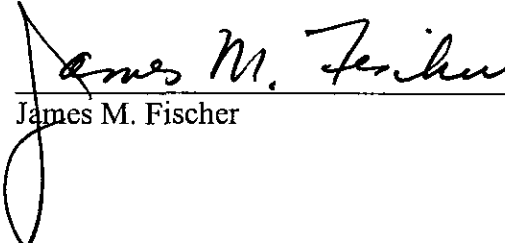
Sondra B. Morgan
Brydon, Swearengen & England, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456

Richard S. Brownlee, III
Hendren and Andrae, L.L.C.
221 Bolivar Street, Suite 300
P.O. Box 1069
Jefferson City, MO 65102

Carl J. Lumley
Leland B. Curtis
Curtis, Oetting, Heinz,
Garrett & Soule, P.C.
130 South Bemiston, Suite 200
St. Louis, MO 63105

Craig S. Johnson
Andereck, Evans, Milne,
Peace & Baumhoer, L.L.C.
305 East McCarty Street
P.O. Box 1438
Jefferson City, MO 65102-1438

Kenneth A. Schiffman
Sprint Communications Company, L.P.
8140 Ward Parkway, 5E
Kansas City, MO 64114



James M. Fischer

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF SOUTHWESTERN)
BELL COMMUNICATIONS SERVICES,) CAUSE NO. PUD 970000114
INC. FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
PROVIDE INTEREXCHANGE SERVICES) ORDER NO. <u>412582</u>
WITHIN THE STATE OF OKLAHOMA)

**HEARING: May 12, 1997
Before Robert E. Goldfield, Administrative Law Judge**

**APPEARANCES: Curtis M. Long and Timothy P. Leahy, Attorneys
Southwestern Bell Communications Services, Inc.**

**Marjorie M. McCullough, Attorney
AT&T Communications of the Southwest, Inc.**

**John W. Gray, Senior Assistant General Counsel
Public Utility Division, Oklahoma Corporation Commission**

**Mickey S. Moon, Assistant Attorney General
Office of the Attorney General, State of Oklahoma**

**FINAL ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY AUTHORIZING SOUTHWESTERN BELL
COMMUNICATIONS SERVICES, INC. TO FURNISH INTRALATA AND
INTERLATA INTEREXCHANGE TELECOMMUNICATIONS SERVICES
THROUGHOUT THE STATE OF OKLAHOMA**

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma (the
"Commission") being regularly in session and the undersigned Commissioners

32702.08



EXHIBIT NO. 1

being present and participating, there comes on for consideration and action the Application of Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance ("SBLD"), for a certificate of Public Convenience and Necessity authorizing it to provide intraLATA and InterLATA interexchange telecommunications services including operator services as an ancillary service throughout the State of Oklahoma.

PROCEDURAL HISTORY

On February 28, 1997, SBLD filed an Application with the Commission to obtain a Certificate of Public Convenience and Necessity to provide intraLATA and InterLATA interexchange telecommunications services including operator services as an ancillary service throughout the State of Oklahoma.

A copy of the Application was served on the Attorney General of the State of Oklahoma ("Attorney General") and on representatives of all the interexchange and local exchange telecommunications carriers certificated in Oklahoma. On March 6, 1997, the Commission, by Order No. 410109, determined the notice to be given and set the procedural schedule. Copies of that order were served on all the telephone companies listed in the 1996-97 directory of the Oklahoma Telephone Association, and on the chief executive officers of each municipality in the State of Oklahoma. The order was also published as required by law.

Motions to intervene were filed by AT&T Communications of the Southwest, Inc. ("AT&T"), Sprint Communications Company, L.P. ("Sprint"), MCI Telecommunications Corporation ("MCI"), Cross Telephone Company, Pottawatomie Telephone Company, Chouteau Telephone Company, Totah Telephone Company, Cimmaron Telephone Company and the Attorney General. The motions to intervene were granted, with the Intervenor's being limited in their participation to issues raised by the face of the Application.

SUMMARY OF TESTIMONY

Karol M. Sweitzer, Vice President-Business Planning and Chief Financial Officer of the Applicant, testified in support of the Application. She testified that SBLD is a wholly owned subsidiary of SBC Communications, Inc. ("SBC") and that SBC has committed to fund SBLD sufficient to operate the long-distance business. Detailed financial information was presented with SBLD's Application. Further, she presented evidence of SBLD's technical and managerial experience in the telecommunications industry, and of its technical, managerial and financial resources to provide interexchange telecommunication service. Ms. Sweitzer further testified that SBLD does not yet have authority from the FCC to provide interLATA telecommunications services in Oklahoma, but that no such service would be offered under the certificate requested here until all such federal authority is obtained. Further, Ms. Sweitzer testified that

SBLD intends to comply with all applicable state and federal rules and regulations.

On cross examination by the Assistant Attorney General, Ms. Sweitzer clarified that SBLD would offer neither interLATA nor intraLATA in Oklahoma until federal authority for Oklahoma interLATA is obtained from the FCC pursuant to Section 271 of the Telecommunications Act of 1996. On cross examination by Mr. John Gray, the attorney for Commission Staff, Ms. Sweitzer clarified that SBLD was not seeking approval of its tariff at this time, and emphasized that SBLD would comply with all applicable rules of this Commission.

FINDINGS OF FACT AND CONCLUSION OF LAW

The Commission finds that it has jurisdiction over the above entitled cause pursuant to Art. IX, Section 18 of the Oklahoma Constitution. 17 O.S. (1995) §131 et seq. and OAC 165:55. Further, the Commission finds that SBLD has complied with the notice requirements prescribed by 17 O.S. §133, by OAC 165:55-3-1 and by the Commission in Order No. 410109. The Commission finds that based on the evidence presented, including the Application, the Appendices to the Application, Hearing Exhibits 1-23 and the oral testimony of the witness, that SBLD's officers and management personnel have experience and managerial skills in the telecommunication business and that SBLD

possesses that technical, managerial and financial ability to provide interexchange telecommunication services in the State of Oklahoma. Further, the Commission finds that no objections to SBLD's Application have been filed with the Commission. Therefore, the Commission finds that SBLD's Application should be granted and that SBLD should be granted a Certificate of Public Convenience and Necessity to provide interLATA and intraLATA interexchange telecommunication services including operator services as an ancillary service throughout the State of Oklahoma; provided, that no services authorized by this certificate shall be offered or provided until SBLD has obtained authority from the FCC for interLATA interexchange service in Oklahoma pursuant to Section 271 of the Telecommunications Act of 1996, and has fulfilled any and all conditions provided for by the issuance of such authority.

ORDER

IT IS THEREFORE THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF Oklahoma that SBLD's Application for a Certificate of Public Convenience and Necessity to provide interLATA and intraLATA interexchange telecommunication services including operator services as an ancillary service throughout the State of Oklahoma is hereby approved.

IT IS FURTHER THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF Oklahoma that no service authorized by this certificate shall be

offered or provided until SBLD has obtained authority from the FCC for interLATA interexchange service in Oklahoma pursuant to Section 271 of the Telecommunications Act of 1996, and fulfilled any and all conditions provided for by the issuance of such authority.

IT IS FURTHER THE ORDER OF THE CORPORATION COMMISSION OF THE STATE OF Oklahoma that all of the findings of the Commission are hereby adopted.

OKLAHOMA CORPORATION COMMISSION

Cody L. Graves

CODY L. GRAVES, Chairman

Ed Apple

ED APPLE.

BOB ANTHONY, Commissioner

DONE AND PERFORMED THIS 22 DAY OF May, 1997,
BY ORDER OF THE COMMISSION:

Charlotte W. Flanagan
CHARLOTTE W. FLANAGAN, Secretary

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing Findings, Conclusions and Order are the Report and Recommendation of the Administrative Law Judge.

Robert E. Goldfield
Robert E. Goldfield
Administrative Law Judge

May 19, 1997
Date

MATTER # 29070
SUBFILE 8

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Timothy E. McKee, Chair
Susan M. Seltsam
John Wine

In the Matter of the Application of)
Southwestern Bell Communications)
Services, Inc., d/b/a Southwestern Bell)
Long Distance, for a Certificate of)
Convenience and Authority to Transact)
the Business of an Interexchange)
Services and Operator Services Provider)
Within the State of Kansas and for)
Approval of Its Initial Tariff.)

Docket No. 97-SBI C-585-COC

ORDER AND CERTIFICATE

NOW, the above-captioned matter comes for consideration and determination before the State Corporation Commission of the State of Kansas (Commission). Having reviewed its files and being fully advised of all matters of record, the Commission finds and concludes as follows:

1. In its Order of April 30, 1984, in Docket No. 127,140-U, the Commission found that resellers were public utilities and subject to Commission regulation. As part of that regulation, the Commission directed resellers of telecommunications services to file applications for Certificates of Convenience and Necessity and accompanying tariffs for approval.

2. In its Order of March 21, 1994, in Docket No. 187,168-U, the Commission adopted revised streamlined rules and regulations governing resellers

and interexchange carriers, hereinafter referred to as interexchange carriers or IXC's, designed to reflect changes occurring in the marketplace.

3. On April 16, 1997, Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (SBLD) filed an application for authority to transact the business of an interexchange carrier within the state. The application included rate tariff pages and rules and regulations tariff pages.

4. On June 17, 1997, the Commission received a memorandum from Commission staff (Staff) recommending the Commission grant SBLD's application for a Certificate of Convenience and Authority to transact the business of an interexchange services and operator services provider and approve its revised tariff. Staff determined SBLD's application complies with the criteria set forth in the Commission's Orders in Docket No. 187,168-U. SBLD is registered with the Secretary of State's office to do business in Kansas. SBLD's filed tariffs, as revised, are in compliance with Commission requirements and meet all current telephone billing standards as set forth in the Commission's Order in Docket No. 120,408-U, as well as current standards for interexchange carriers. SBLD uses a billing agent and its charges appear on local exchange company bills.

5. SBLD is a first tier subsidiary of SBC Communications, Inc. As such, SBLD cannot provide interlata services until SBC Communications, Inc. has been granted authority by the Federal Communications Commission pursuant to the provisions of the federal Telecommunications Act of 1996.

6. SBLD's tariffs included deposit provisions. SBLD has not been in existence long enough to qualify to take deposits. Therefore, SBLD has agreed to post a surety bond.

7. SBLD has requested authority to levy a 1.5 percent late payment charge on overdue accounts. The charge will be assessed only on amounts billed in arrears and shall not be applied to any arrearage to which the charge has been previously applied.

8. The Commission finds and concludes that the public convenience will be promoted by increased options for interexchange long distance services by granting SBLD's application. The Commission therefore grants the authority requested by SBLD in this docket, including the authority to levy a late payment charge, without a public hearing, subject to all other rules, regulations, or statutes of, by, or governing the Commission, in particular those set out in Docket Nos. 187,168-U and 120,408-U. The Commission's grant of authority is contingent upon SBC Communications, Inc., obtaining authority from the Federal Communications Commission to provide interlata service.

9. The authority to provide interexchange service within the areas known as LATAs is subject to Commission Orders dated June 11, 1985, and January 29, 1986, in Docket No. 127,140-U (Phase IV), and the Commission Orders issued April 30, 1993, and June 4, 1993, in Docket No. 181,097-U. Further, SBLD is required to file an annual report with the Commission and to notify the Commission of any changes in its structure or operation.

8. The Commission also finds and concludes that SBLD's non-rate tariffs, as revised, are reasonable and should be accepted. Nothing in this certificate authorizes SBLD to offer services differing from those listed in its accepted tariffs.

THEREFORE, THE COMMISSION ORDERS AND CERTIFIES THAT:

The application of Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for a Certificate of Convenience and Authority to transact the business of an interexchange services and operator services provider within the state of Kansas is hereby granted pursuant to K.S.A. 66-131, as set out above. SBLD's tariffs are accepted. SBLD must provide service under the terms and conditions set forth in this order and under Kansas law. This authority is contingent upon, and will not become effective until, authority to provide interlata service is granted by the Federal Communications Commission to Southwestern Bell Communications, Inc. pursuant to the federal Telecommunications Act of 1996.

Any party may file a petition for reconsideration of this order within fifteen days of the date this order is served. If service is by mail, service is complete upon mailing and three days may be added to the above time frame.

The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED AND CERTIFIED.

McKee, Chr.; Seltsam, Com.; Wine, Com.

Dated: JUN 27 1997

10/05/98

09:11

10:20

F W U S TUPEKA → 816 753 1536

NO. 004

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NO. 811

006

ORDER MAILED
JUN 5 1997
Judith McConnell Executive Director

Judith McConnell
Executive Director

SHK:kr