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February 17, 1999

Mr. Dale Hardy Roberts
Secretary
Missouri Public Service Commission
301 W. High Street, Room 530
Jefferson City, MO 65102

FILED

FEB 17 1999

Missouri Public
Service Commission

RE: TO-99-227

Dear Mr. Roberts:

Enclosed for filing with the Commission is an original and 14 copies of :

**PUBLIC COUNSEL'S COMMENTS
ON THE EFFECT OF THE SUPREME
COURT DECISION**

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Michael F. Dandino
Senior Public Counsel

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

FILED
FEB 17 1999
Missouri Public
Service Commission

Application of Southwestern Bell)
Telephone Company to Provide Notice)
of Intent to File an 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

**PUBLIC COUNSEL'S COMMENTS
ON THE EFFECT OF THE SUPREME
COURT DECISION**

COMES NOW the Office of the Public Counsel and provides the following comments to the Public Service Commission on the recent decision of the U. S. Supreme Court in AT&T Corp. et al v. Iowa Utilities Board, et al, No. 97-826 (January 25, 1999). This is the first Supreme Court decision construing the Federal Telecommunications Act, reversing most of the 8th Circuit Court of Appeals decision and reaffirming Congress' intent that the FCC has general jurisdiction to implement local service competition. The decision effectively reinstates the FCC rulemaking related to implementing the Act.

For purposes of the Section 271 application, the most significant impact of the decision relates to unbundled network elements (UNEs). The Court held that the FCC rule improperly fails to take into account on a rational basis which elements must be made available, taking into account the objectives of the Act and giving substance to the "necessary" and "impair" requirements in the Act. The FCC's expansive rule creating an underlying duty to make all elements available was vacated as not providing a reasonable

interpretation of the Act. The remand of this Rule 319 essential creates no rule for UNEs. Without a rule, how can SWBT comply with the second checklist item?

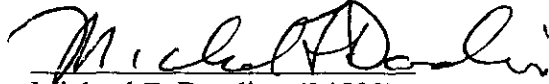
The decision also restored the FCC's authority over intralata dialing parity. This is also a checklist item and the compliance with the FCC rule is now the standard.

Public Counsel suggests that this decision affects the legal landscape under which this Commission must view compliance with the Act. It is difficult to fully brief the import of this decision in so short a period of time and to adequately view the filed testimony in light of the decision. That is the task before the parties and the Commission.

With this decision, the ground rules are different than they were when SWBT filed its Section 271 application notice and the accompanying testimony and when the parties filed testimony supporting their comments and positions. It is difficult to determine whether SWBT complies with portions of the Act when (1) no one knew how the Court would decide the case (2) no one could have addressed how the decision relates to the present facts. Therefore, Public Counsel suggests that in the interests of providing parties with a full and fair opportunity to present relevant facts to the Commission and the Commission's interest in creating a full and complete record for its review and for the FCC to consider SWBT's application, the Commission should allow parties to file supplemental testimony to address how the law is applied to the existing facts and address how it affects SWBT's application. The Commission can then consider this additional evidence and cross-examine the witnesses with the benefit of this supplemental testimony. This does not require continuation of the hearing, but may cause it to extend beyond the current time frame.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL



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I hereby certify that the foregoing was mailed or hand delivered this 17
day of Feb, 1999 to the attached service list:



**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
February 10, 1999**

CASE NO: TO-99-227

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