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The Honorable Michael Powell
The Honorable Susan Ness
The Honorable Harold Furchgott-Roth
The Honorable Gloria Tristani
Federal Communications Commission
The Portals
445 12th Street
Washington, D.C. 20554

Ex Parte Communication Re: *In the Matter of the Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Service in Missouri*, CC Docket No. 01-88.

Dear Commissioner Ness:

Southwestern Bell's application to this Commission asking for its authorization to allow Southwestern Bell to provide In-Region InterLATA service in Missouri is premature. From the inception of this case through years of pleadings, document review, and hearings, to this date, the Missouri Attorney General has asserted the same consistent position: Southwestern Bell should be granted authority to provide long distance service when, upon strict scrutiny, each of the elements of 47 U.S.C. § 271 (1996) has been met, and where Southwestern Bell has not met an element, it should be directed with a "road map to compliance".

Though Southwestern Bell's application has improved greatly since November of 1998, Southwestern Bell has not, as of yet, met all of the criteria established by § 271 as prerequisite to its being granted authority to provide interLATA long distance service in Missouri. There are a couple of important issues that Southwestern Bell needs to address in order to perfect its application -- first, interconnection on a nondiscriminatory basis and second, establishing a track record that evidences actual compliance rather than theoretical compliance.

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Interconnection with competing local exchange carriers ("CLEC's") is a key concept to the opening of local service markets. Facilities-based competition is a more effective and a more permanent way to open local service markets to competition than pure resale. Southwestern Bell's M2A agreement for interconnection is a step in the right direction, but certain of its pricing elements need to be adjusted downward. There is no credible reason why pricing elements in M2A should exceed, let alone greatly exceed, the price of those same elements that Southwestern Bell offers in its T2A agreement in Texas. The Comments of the Missouri Office of the Public Counsel ("MOPC") and the Evaluation of the United States Department of Justice filed with the Commission in this case do a commendable job outlining this pricing issue. We urge the Commission to factor those comments into its decision making.

Second, prior to approval, Southwestern Bell should implement the M2A for a reasonable period of time, ninety days, for example, so that so that the Missouri Public Service Commission, and vicariously, this Commission, can assess whether Southwestern Bell is, in actuality (rather than just theoretically), providing interconnection to CLEC's on a nondiscriminatory basis as required by § 271.

The Missouri Public Service Commission ("MPSC") did yeoman's work in gathering the evidence and providing the all the parties with opportunity to assert their positions. The MPSC's February 13, 2001 Order made findings that Southwestern Bell did not comply with 4 of the 14 items of the § 271 competitive checklist. Those items -- nondiscriminatory access to interconnection, nondiscriminatory access to unbundled network elements, nondiscriminatory access to unbundled local loops, and nondiscriminatory access to unbundled local transport -- are crucial to facilities-based competition. That order also stated that the MPSC would issue a conditional approval if Southwestern Bell made certain changes to M2A. Southwestern Bell did make some changes, but not enough to earn immediate approval.

The Missouri Attorney General and MOPC urged the MPSC to withhold its approval of Southwestern Bell's application until after Southwestern Bell had made M2A available for a compliance period. That way, the MPSC would have evidence upon which to base its decision that Southwestern Bell was functionally providing nondiscriminatory access to its network. The MPSC did not adopt that suggestion. But this Commission should. Compelling Southwestern Bell to live up to the offering promises of M2A will reduce the likelihood of backsliding to practices which make it difficult for CLEC's to gain a market foothold.

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Southwestern Bell's own expert witness, Dr. Alfred Kahn, captured that concept most eloquently in his testimony before the MPSC. Dr. Kahn testified:

> I think that letting the RBOCs in [long distance] will encourage local competition because the long distance carriers will want to be able to offer one-stop shopping, but you have to first make sure that the local market is indeed open at least under Track B. I do not say that -- I would be totally misunderstood if you felt that I was saying let them into interLATA and then look to see whether Track A or B is satisfied. That's not what the Act says, and quite properly it does not. [emphasis added] (Tr. 518-519).

The Missouri Attorney General urged the MPSC to provide Southwestern Bell with a "road map to compliance" because simply denying Southwestern Bell's application will not open local markets. The Missouri Attorney General does likewise here. We understand the procedural mechanism that the Act imposes on this Commission's decision making regarding Southwestern Bell's § 271 application. But this Commission can point Southwestern Bell in the right direction and help it and Missouri's CLEC's complete the journey started in November of 1998. Doing that will benefit Missouri consumers in the long run. Thank you kindly for your attention to our concerns.

Respectfully,

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Parties on attached service list