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Southwestern Bell

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August 31, 1982

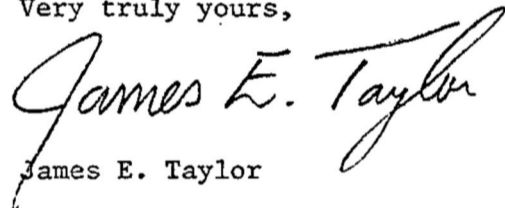
Mr. Harvey G. Hubbs, Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

Re: 1982 Missouri Rate Case No. TR-82-199

Dear Mr. Hubbs:

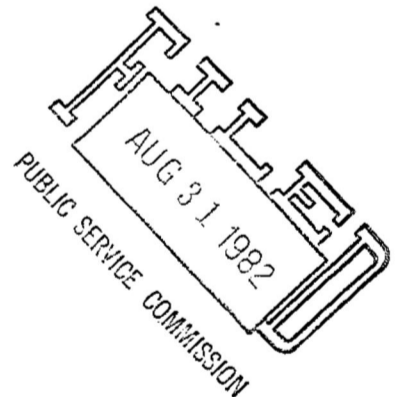
In connection with the above-referenced case, please find enclosed herewith an original and fourteen (14) copies of Southwestern Bell's Motion For Hearing and Ruling on Southwestern Bell Telephone Company's Objections to Staff's Data Request No. 606. We would appreciate your filing this Motion and bringing it to the attention of the Commission. Copies have been sent this date to Mr. Kent M. Ragsdale, General Counsel, Mr. James M. Fischer, Public Counsel, and to all parties of record in this case.

Very truly yours,


James E. Taylor

Enclosures

cc: Mr. Steinmeier
Mr. Ragsdale
Mr. Fischer
All Parties of Record



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the filing by)
Southwestern Bell Telephone)
Company of new intrastate rates,)
tolls and charges applicable to) Case No. TR-82-199
services furnished within the)
State of Missouri.)

MOTION FOR HEARING AND RULING ON SOUTHWESTERN BELL
TELEPHONE COMPANY'S OBJECTIONS TO STAFF'S DATA REQUEST NO. 606

Comes now Southwestern Bell Telephone Company ("Southwestern Bell"),
and for its Motion for Hearing and Ruling on Southwestern Bell Telephone Company's
Objections to Staff's Data Request No. 606, states as follows:

1. In the course of discovery in this case, the Missouri Public
Service Commission Staff ("Staff") submitted to Southwestern Bell its Data
Request No. 606 on July 8, 1982, which requested Southwestern Bell to make
available for Staff's review Arthur Young's work papers for Western Electric
for 1981.

2. After days of attempting to work out some compromise solution
between Staff and Western Electric, Southwestern Bell filed objections to Staff's
Data Request No. 606 on August 6, 1982, alleging, among other things, that the
documents sought by said request were not discoverable because they were not
in the possession, custody or control of Southwestern Bell, and that the
documents sought were protected by the Missouri accountant-client privilege.
In support of its objections, Southwestern Bell filed affidavits and legal
suggestions.

3. To date, the Commission has not ruled on Southwestern Bell's
objections to Data Request No. 606, and Staff has not sought, as is its obli-
gation, a ruling from the Commission which would require Southwestern Bell to
furnish the requested documents.

4. On August 23, 1982, Southwestern Bell received a pleading entitled
"Staff's Response to Southwestern Bell's Objections to Staff's Data Request No.
606." In this pleading, Staff announced its intention to file testimony advocating
a punitive "low end" recommendation on Southwestern Bell's authorized rate of
return due to Southwestern Bell's failure to provide the documents requested in

Data Request No. 606. Contrary to the legal requirements of virtually all judicial and administrative forums relative to discovery matters, Staff has also requested that the Commission defer a ruling on Southwestern Bell's objections to Data Request No. 606 pending its Report and Order in this case.

5. In proposing its punitive recommendation, Staff relies on the Commission's decision in Southwestern Bell's 1979 rate case, No. TR-79-213. In that case, the Commission disallowed certain license contract expenses related to antitrust litigation on the grounds that Staff had been denied access to the supporting documents. Staff's reliance on this decision is totally misplaced, even assuming that the decision correctly states the law, since the situation at hand is clearly distinguishable from the situation in Case No. TR-79-213.

Southwestern Bell is not relying on the work papers of Arthur Young's audit of Western Electric to support any level of expense in this case, and, in fact, Southwestern Bell has never even seen the requested documents. Furthermore, Southwestern Bell has not denied the Staff access to the documents, since they are not Southwestern Bell's documents.

6. Staff's stated intention to file testimony, the purpose of which is to punish Southwestern Bell for failure to comply with a discovery request, is totally improper prior to a determination that Southwestern Bell has any obligation or ability to furnish the requested documents. It should also be noted that Staff is not merely advocating the disallowance of an item of expense as it did in TR-79-213, but rather has indicated that it will file punitive testimony on the rate of return issue instead of addressing the merits of the actual issue at hand.

7. Southwestern Bell's objections to Data Request No. 606 constitute a discovery matter which should be disposed of prior to the commencement of hearings in this case. If the Commission were to rule in favor of Southwestern Bell in the discovery matter, Staff would have no basis for its punitive position. In the only other discovery disputes which have arisen in this case, involving Southwestern Bell's objections to Public Counsel's Data Request Nos. 2 through 11, and Southwestern Bell's objections to Trenton's First Set of Data Requests Nos. 1 through 3, actions to compel Southwestern Bell to answer were properly instituted. Thereafter, the Commission issued a ruling on the propriety of

Southwestern Bell's objections. The treatment of the instant dispute should be handled in the same manner.

Rule 61, Supreme Court Rules, provides sanctions for enforcement of discovery. Under this Rule, however, if a party has filed objections to the requested discovery, no sanctions can be imposed until the objections are overruled by the Court, and even then the responding party is given a reasonable time to comply prior to the time sanctions are actually imposed. In Circuit Court, general practice requires the party making the discovery request to seek a ruling on the objections to discovery. Commission Rule 4 CSR 240-2.090 recognizes that authorized discovery procedures in Commission proceedings shall be conducted in the same manner and under the same conditions as in civil actions in Circuit Court.

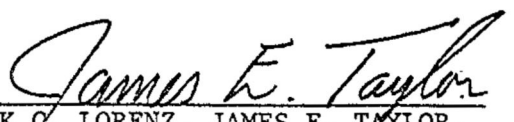
8. Although the appropriate procedures would be for Staff to seek a ruling on Southwestern Bell's objections to Data Request No. 606, Staff instead seeks to defer a ruling on them. Under the circumstances, Southwestern Bell is compelled to seek a ruling on its objections, and requests that a ruling, with or without oral argument and formal hearing, be issued prior to the end of the first week of the prehearing conference in this case (September 10, 1982).

WHEREFORE, Southwestern Bell respectfully requests that the Commission rule on its objections to Staff's Data Requests No. 606, on or before September 10, 1982, and requests that any hearing thereon be scheduled sufficiently in advance of that date to enable the Commission to enter its ruling by the requested date.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Hearing and Ruling on Southwestern Bell Telephone Company's Objections to Staff's Data Request No. 606 has been mailed, postage prepaid, this 31st day of August, 1982, to: Mr. Kent M. Ragsdale, General Counsel, Missouri Public Service Commission, P. O. Box 360, Jefferson City, Missouri 65102; Mr. James Fischer, Public Counsel, 1014 Northeast Drive, Jefferson City, Missouri 65101; and to all parties of record in this case.

