

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

In the Matter of Proposed Amendment to)
Commission Rules 4 CSR 240-3.530 and) TX-2003-0389
4 CSR 240-3.535, and New Rules)
4 CSR 240-3.560 and 4 CSR 240-3.565)

SOUTHWESTERN BELL TELEPHONE, L.P., d/b/a SBC MISSOURI'S
COMMENTS REGARDING PROPOSED AMENDMENT TO COMMISSION
RULES 4 CSR 240-3.530 AND 4 CSR 240-3.535, AND NEW RULES
4 CSR 240-3.560 AND 4 CSR 240-3.565

Comes now Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri"), and for its Comments Regarding Proposed Amendment to Commission Rules 4 CSR 240-3.530 and 4 CSR 240-3.535, and New Rules 4 CSR 240-3.560 and 4 CSR 240-3.565, states as follows:

1. In proposed Rule 4 CSR 240-3.535, the Missouri Public Service Commission ("Commission") indicates that it is: "adding a new section (1) to remove current exemptions and renumbering the remaining sections." The Commission indicates that the purpose of this amendment is that it:

removes current exemptions for competitive companies. This amendment also incorporates language in section (1) that was inadvertently omitted in the March 2003 rule revisions and renumbers the remainder of the rule accordingly.

However, when one reads proposed rule 4 CSR 240-3.535, it appears that the Commission is actually creating an exemption for competitive local exchange companies. Specifically, proposed Rule 4 CSR 240-3.535(1) provides: "Competitive telecommunications companies are exempt from subsection (2)(B) of this Rule." Subsection (2)(B) provides: "In addition to the requirements of 4 CSR 240-2.060(1), applications for authority to acquire the stock of a public utility shall include . . . (B) A

certified copy of the resolution of the directors of applicant authorizing the acquisition of the stock.” The Commission should specifically set forth the reasons for this proposed exemption so that all local exchange telecommunications companies can comment on it appropriately.

2. Proposed Rule 4 CSR 240-3.560(1) sets forth a procedure for ceasing operations. Specifically, proposed Rule 4 CSR 240-3.560(1) provides:

(1) All telecommunications companies ceasing operation in Missouri or discontinuing service to any geographic service area within the state shall provide to the commission:

- (A) A statement of the reasons for ceasing or discontinuing service;
- (B) Date of planned service cessation or discontinuance;
- (C) Geographic areas affected by cessation or discontinuance of service;
- (D) A brief description of the service(s) to be ceased or discontinued;
- (E) A statement as to whether the company’s tariff(s) and certificate shall remain in effect or be cancelled;
- (F) A statement that all affected customers have been notified at least thirty (30) days prior to the cessation or discontinuance;
- (G) A statement that all affected customers have been informed as to how they can select a new service provider.

It appears that the thrust of this proposed Rule is to establish procedures for telecommunications companies that either cease to provide basic local telecommunications service or cease to be a provider of interexchange telecommunications service (i.e. long distance calling). It does not appear that the Commission intends to require the proposed Rule to be followed when a company discontinues providing a particular service in a geographic area, but continues to provide basic local service or interexchange services in that area. It would make no sense, for example, to require telecommunications companies to inform affected customers as to

how they can select a new service provider if the telecommunications company is not seeking to withdraw from the provision of basic local or interexchange telecommunications service in that geographic area. In order to clarify the intent of the proposed Rule, SBC Missouri proposes to insert the words “basic local or interexchange telecommunications” between the words “discontinuing” and “service.” The Commission should make clear that this proposed Rule does not apply to carriers who have simply eliminated a particular service (e.g. a long distance calling plan or a vertical service), but continue to operate in the area providing basic local and/or interexchange services. Proposed Rule 4 CSR 240-3.560(1) would then read:

(1) All telecommunications companies ceasing operation in Missouri or discontinuing **basic local or interexchange telecommunications**¹ service to any geographic service area within the state shall provide to the commission:

(A) A statement of the reasons for ceasing or discontinuing service;

(B) Date of planned service cessation or discontinuance;

(C) Geographic areas affected by cessation or discontinuance of service;

(D) A brief description of the service(s) to be ceased or discontinued;

(E) A statement as to whether the company’s tariff(s) and certificate shall remain in effect or be cancelled;

(F) A statement that all affected customers have been notified at least thirty (30) days prior to the cessation or discontinuance;

(G) A statement that all affected customers have been informed as to how they can select a new service provider.

3. Proposed Rule 4 CSR 240-3.565 provides a procedure for telecommunications companies that file bankruptcy. SBC Missouri offers the following comments.

¹ Language that SBC Missouri proposes to add is noted in **bold**. Language that SBC Missouri proposed to delete is noted in brackets in bold, i.e. [**bold**].

a. It is not clear why this proposed Rule requires a telecommunications company to report on the bankruptcy of an affiliate, but fails to require such notice when the parent company of a CLEC files bankruptcy. If the affiliate is a telecommunications provider in Missouri, the proposed Rule requires the affiliate to provide notice itself. If the affiliate is not a telecommunications provider in Missouri, there is no need to advise the Commission that the affiliate has filed for bankruptcy. However, it is important that the Commission be advised if the parent of a CLEC files for bankruptcy relief.

b. Proposed Rule 4 CSR 240-3.565(1) fails to specify when any telecommunications company that files bankruptcy is required to notify the Commission that it has filed bankruptcy. This proposed Rule should specify that any telecommunications company that files bankruptcy shall notify the Commission immediately after it has filed bankruptcy so that the Commission can file a Notice of Appearance if it so desires or monitor the case if it does not enter its appearance.

c. SBC Missouri submits that proposed Rule 4 CSR 240-3.565(2) raises concerns. Proposed Rule 4 CSR 240-3.565(2) provides:

If the bankruptcy court approves the transfer of customers to another telecommunications company, a copy of the bankruptcy order shall be provided to the commission with the application for service authority or application for approval to transfer assests.

(A) The application for service authority or application for approval to transfer assets shall contain a statement as to whether the existing company's tariff and certificate shall remain in effect or be cancelled.

If the bankruptcy court approves the transfer of customers to another telecommunications company that is not certificated to provide basic local service in the State of Missouri and that provider files an application for service authority, who is providing those customers service during the pendency of the application for service authority and under what

authority? Further, if the Commission denies the application for service authority, who is providing those customers service and under what authority? Moreover, proposed Rule 4 CSR 240-3.565(2)(A) fails to provide a time frame in which a telecommunications company must file an application for service authority or for approval to transfer assets. SBC Missouri proposes that the telecommunications company be required to file an application for service authority or for approval to transfer assets within forty five (45) days after the bankruptcy court enters the order approving the transfer of customers.

d. Proposed Rule 4 CSR 240-3.565(3) requires a telecommunications company filing bankruptcy that has telecommunications facilities that are located at the premises of another telecommunications company to provide certain information to the Commission. However, 4 CSR 240-3.565(3) fails to specify when the telecommunications company filing bankruptcy has to provide this information to the Commission. SBC Missouri proposes that the telecommunications company filing bankruptcy should provide such information to the Commission within 75 days of filing the petition for bankruptcy relief. This recommendation is based on two sections of the Bankruptcy Code. Specifically, 11 U.S.C. Section 365(d)(1) provides: “In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease . . . of personal property of the debtor within 60 days after the order for relief, . . . , then such contract or lease is deemed rejected.” 11 U.S.C. Section 365(d)(4) provides: “Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, . . . , then such lease is deemed rejected, and the trustee shall immediately surrender

such nonresidential real property to the lessor.” In both cases, the debtor can ask the court for more time to make a decision. Thus, 75 days would allow the debtor sufficient time to provide information to the Commission.

e. Moreover, proposed Rule 4 CSR 240-3.565(3)(D) fails to ensure that the debtor’s personal property will be removed by the debtor and at the debtor’s expense. SBC Missouri has experienced companies who cease providing service and simply leave their equipment in SBC Missouri’s buildings which is costly for SBC Missouri to remove. For these reasons, SBC Missouri recommends that language be added to this section that would require the debtor to disconnect and remove its personal property from the premises and dispose of such personal property properly.

f. In order to address the matters raised in paragraphs 3(a)-(c), SBC Missouri proposes to revise proposed Rule 4 CSR 240-3.565(1) as follows:

(1) Any telecommunications company certificated in Missouri that files bankruptcy **[or has an affiliate that files bankruptcy] or whose parent files bankruptcy** shall, **immediately after filing bankruptcy**, provide to the commission:

(A) A notice that the company **[or an affiliate] or its parent** has filed bankruptcy;

(B) The bankruptcy case number;

(C) The bankruptcy filing date;

(D) The bankruptcy chapter number; and

(E) The bankruptcy court.

(2) If the bankruptcy court approves the transfer of customers to another telecommunications company, a copy of the bankruptcy order shall be provided to the commission with the application for service authority or application for approval to transfer assets. **An application for service authority or application for approval to transfer assets shall be filed within forty-five (45) days after the bankruptcy court approves the transfer of customers.**

(A) The application for service authority or application for approval to transfer assets shall contain a statement as to whether the existing company’s tariff and certificate shall remain in effect or be cancelled;

(3) If the telecommunications company filing bankruptcy has telecommunications facilities that are located at the premises of another telecommunications company, the company filing bankruptcy shall, **within seventy five (75) days after filing bankruptcy**, provide to the commission:

(A) A statement identifying the telecommunications facilities and their locations;

(B) A statement identifying the entities with an interest in the telecommunications facilities;

(C) A statement describing disposition of the telecommunications facilities and the entity conducting the disposition of the facilities; and

(D) A statement informing of the date when the telecommunications facilities **[will be properly disposed] has been or will be disconnected and removed from the premises of the other telecommunications company and disposed of properly.**

(4) If the information provided in sections (1)-(3) above is submitted electronically, it will be submitted as a non-case related submission in the commission's Electronic Filing Information System (EFIS).

(5) If the information provided in section (1)-(3) above is submitted in paper format, it will be submitted to the manager of the Telecommunication Department.

Wherefore, SBC Missouri prays that the Commission consider its comments and modify the proposed rules as outlined above, together with any further and/or additional relief the Commission deems just and proper.

Respectfully submitted,

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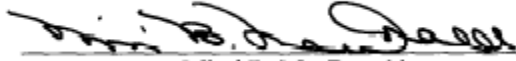
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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on June 2, 2004.


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