

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 14th  
day of September, 1982.

Case No. TR-82-199

In the matter of the filing  
by Southwestern Bell Telephone  
Company of new intrastate rates,  
tolls and charges applicable to  
intrastate telecommunication services  
furnished within the State of Missouri.

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ORDER SUSTAINING OBJECTIONS TO DATA REQUEST

On August 31, 1982, Southwestern Bell filed a "Motion for Hearing and Ruling on Southwestern Bell Telephone Company's Objections to Staff's Data Request No. 606." Said Data Request was submitted by the Staff of the Commission to Southwestern Bell on July 8, 1982, and requested Bell to make available for Staff's review certain work papers of Arthur Young and Company relating to that firm's 1981 audit of Western Electric Company. Southwestern Bell filed objections to the Data Request on August 6, 1982 alleging, among other things, that the documents sought by the 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. On August 23, 1982, the Staff filed a Response to Southwestern Bell's objections to the Data Request, requesting the Commission to withhold its determination respecting Southwestern Bell's objections to Data Request No. 606 pending the issuance of a Report and Order in this case. Staff stated in its Response that it intended, as a result of Bell's objection to the Data Request, to recommend that the Commission authorize Bell the opportunity to earn only the low end of Staff's recommended rate of return range in this case. Staff indicated that it would present evidence in its prefiled testimony and exhibits in this case concerning Bell's refusal to answer Data Request No. 606.

By its Motion of August 31, 1982, Southwestern Bell requested that the Commission set a hearing on Bell's objections to Data Request No. 606 and issue an order ruling on those objections. Bell believes that the Staff's stated intention to file testimony intended to punish Southwestern Bell for failure to comply with the discovery request is totally improper prior to a determination that Southwestern Bell has any obligation or ability to furnish the requested documents. Bell asserts that its objections to Data Request No. 606 constitute a discovery matter which should be disposed of prior to the commencement of hearings in this case. Bell asserts that no sanctions can be imposed for enforcement of discovery (such as the rate of return determination which Staff indicates it will seek) until the objections are overruled by the Commission and the responding party is given a reasonable time to comply prior to the imposition of such sanctions.

By Order dated September 2, 1982, the Commission scheduled oral argument by counsel concerning Southwestern Bell's objections to Data Request No. 606. Such oral arguments were presented in the Commission's hearing room on Wednesday afternoon, September 8, 1982. Also on September 8, 1982, Staff filed a "Motion in Response to Southwestern Bell Telephone Company's August 31, 1982 Motion for Hearing and Ruling, and In Support of Data Request No. 606," requesting that the Commission deny Southwestern Bell's objections to the Data Request in question.

Having considered Southwestern Bell's objections, supporting affidavits and suggestions in support of its objections, filed August 6, 1982, Staff's Response filed August 23, 1982, Staff's Motion in Response filed September 8, 1982, and the arguments of counsel presented to the Commission on September 8, 1982, the Commission determines that Southwestern Bell's objections to Staff's Data Request No. 606 should be sustained. According to counsel for Bell, the documents sought by Data Request No. 606 are not in the possession, custody or control of Southwestern Bell Telephone Company, and Arthur Young and Company and Western Electric Company have not been willing to provide those documents to Southwestern Bell upon the terms proposed by the Staff to date. Counsel for Staff did not demonstrate otherwise. Therefore, upon

the record before the Commission at the present time, the Commission will not compel Southwestern Bell to provide to the Staff the documents in question, which are not in Southwestern Bell's possession, custody or control. The parties should note, however, that the Staff, Company, or any other party may be able to obtain said documents through the Commission's subpoena power. Finally, having found that Bell does not have possession, custody or control of the documents, the Commission specifically does not reach the issue of the accountant-client privilege.

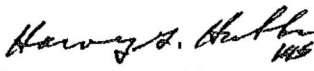
At the oral argument on September 8, 1982, Southwestern Bell also urged the Commission to rule, in the nature of an order in limine, on Staff's recommendation that the Commission authorize the Company the opportunity to earn only the low-end of Staff's recommended rate of return range in this case. To the extent that Staff's recommendation is proposed as a sanction against Southwestern Bell for failure to answer Data Request No. 606, the Company's motion in limine is granted.

It is, therefore,

ORDERED: 1. That Southwestern Bell Telephone Company's objections to Staff's Data Request No. 606, filed August 6, 1982, be, and are hereby, sustained; and that Company's motion in limine be, and is hereby, granted as discussed hereinabove.

ORDERED: 2. That this Order shall become effective on the date hereof.

BY THE COMMISSION

  
Harvey G. Hubbs  
Secretary

(S E A L)

McCartney, Dority, Shapleigh and  
Musgrave, CC., Concur.  
Fraas, Chm., Not Participating.