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January 5, 1996

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Mr. David L. Rauch
Executive Secretary
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. TO-94-184

Dear Mr. Rauch:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of **FILING IN COMPLIANCE WITH COMMISSION ORDER OF APRIL 11, 1995.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely,

Thomas R. Schwarz, Jr.
Thomas R. Schwarz, Jr.
Senior Counsel
314-751-5239

TRS/bel
Enclosures

cc: Counsel of Record

FILED

JAN 05 1996

**MISSOURI
PUBLIC SERVICE COMMISSION**

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

In the matter of the)
investigation into)
Southwestern Bell Telephone) Case No. TO-94-184
Company's affiliate)
transactions.)

FILING IN COMPLIANCE WITH COMMISSION ORDER OF APRIL 11, 1995

COMES NOW the Staff of the Missouri Public Service Commission, and in compliance with the Commission's Order in this docket dated April 11, 1995, files for Commission consideration the attached proposed rule governing affiliate transactions.

Because the proposed rule deals specifically with the matters which the parties could not resolve among themselves in their earlier Stipulation And Agreement in this case, and because any proposed Commission rulemaking would provide the opportunity for all affected parties to comment, this draft rule is solely the product of Staff. This filing by the Staff only does not indicate concurrence in any part of the proposed rule by any other party, nor does it indicate lack of interest or neglect on the part of any of the parties. The parties have proceeded in this manner solely to conserve the resources of the Commission and the parties.

Respectfully submitted,

Thomas R. Schwarz, Jr.
Thomas R. Schwarz, Jr.
Senior Counsel

FILED

JAN 05 1996

**MISSOURI
PUBLIC SERVICE COMMISSION**

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**Title 4 - DEPARTMENT OF
ECONOMIC DEVELOPMENT**

**Division 240 - Public Service
Commission**

Chapter 2 - Practice and Procedure

4 CSR 240-2.135 Affiliate Transactions

PURPOSE: This rule defines affiliate transactions and prescribes evidentiary procedures in contested cases before the commission in which affiliate transactions are an issue.

(1) Definitions.

(A) "Affiliated companies" means companies that directly or indirectly, through one or more intermediaries, control or are controlled by or are under common control with, the regulated company. The term also includes the unregulated business activities or divisions of a regulated company.

(B) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, directly or indirectly, of the power to influence, direct, or to cause the direction of the management or policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated companies, contract or any other direct or indirect means. Beneficial ownership of 5% (five percent) of any class of security of a company shall be deemed to confer control for purposes of this rule.

(2) Standards of conduct.

A utility shall not provide a financial or non-financial advantage to an affiliated company. When a regulated utility does business with an affiliated company, the following standards shall apply:

(A) Financial transactions. A regulated utility shall be deemed to provide a financial advantage to an affiliated company if:

1. It buys goods or services from an affiliate above the lesser of
 - i. fair market price, or
 - ii. the cost to the regulated utility to provide the good or service for itself.

2. It transfers goods or services of any kind (including, but not limited to, land, patents, trained employees, research, employee training, etc.) to an affiliate below the greater of:

- i. fair market price, or
- ii. the fully allocated cost to the regulated utility.

(B) Non-financial transactions. A regulated utility shall be deemed to provide a non-financial advantage to an affiliated company if:

1. It provides a service to an affiliated company which is not made available, on the same terms, to the affiliate's competitors.

2. It provides planning, coordination, or design knowledge; customer information; or cooperation of any kind, to an affiliated company, which is not available to the affiliate's competitors.

(3) Evidentiary Standards.

(A) In any proceeding before the Commission in which affiliate transactions are at issue, the regulated utility shall bear the burden of persuasion.

(B) The commission requires more and better proof of the reasonableness of the transaction as the value of the transaction increases.

(C) The commission expresses a strong preference for competitive bids when a regulated utility purchases goods or services from an affiliate.

(D) In transactions involving sales of goods or services to affiliates, the commission will require proof that, at the time of the transaction the utility: considered all costs incurred to complete the transaction; calculated the costs at times relevant to the transaction; allocated joint and common costs appropriately; and adequately determined the market value of the services.

(E) In transactions involving the purchase of goods or services by a regulated utility from an affiliate, the Commission will examine both the cost to the affiliate to produce the good or service, and the cost to the regulated utility to produce the good or service for itself.

(4) Recordkeeping Requirements. All regulated utilities shall:

(A) Report to the commission annually all affiliated companies as defined by this rule.

(B) Report annually to the commission all contracts entered with affiliated companies, and all transactions undertaken with affiliates without a written contract.

(C) Report the annual amount of affiliate transactions by affiliate, by account charged.

(D) Report the basis used (e.g., market value, book value, etc.) used to record affiliate transactions.

(E) Maintain books of account and supporting records in sufficient detail to permit verification of compliance with this