

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Proposed Amendments to)
Commission Rule 4 CSR 240-2.115) Case No. AX-2002-158

COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY

COMES NOW Southwestern Bell Telephone, [L.P. d/b/a](#) Southwestern Bell Telephone Company (Southwestern Bell), and for its Comments regarding the Missouri Public Service Commission's (Commission's) proposed amendments to Rule 2.115, states to the Commission as follows:

1. The Commission's proposed amendments to Rule 2.115, which were published in the Missouri Register on May 1, 2002, provide as follows: ¹

4 CSR 240-2.115 [Nonunanimous] Stipulations and Agreements.

(1) [A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all parties and where one (1) or more parties requests a hearing of one (1) or more issues. If no party requests a hearing, the commission may treat the stipulation and agreement as a unanimous stipulation and agreement.]

Stipulations and Agreements.

(A) The parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case. Any such stipulation and agreement must contain stipulated facts sufficient to support the resolution proposed by the parties. A stipulation and agreement shall be filed as a pleading.

(B) The Commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.

(2) [If a hearing is requested, the commission shall grant the request.]

Nonunanimous Stipulations and Agreements.

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

As used in these Comments, new text proposed by the Commission appears in bold. Text from the current rule which the Commission proposes to delete is bracketed. New text proposed by Southwestern Bell is underlined, and text from the Commission's proposed rule which Southwestern Bell proposes to strike is lined-out.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing. A conditional assent to a nonunanimous stipulation and agreement shall be regarded as a non-conditional assent and not as an objection.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

(D) A nonunanimous stipulation and agreement to which a timely objection has been **filed shall** be considered to be merely a position of the signatory parties to the stipulated position.

(E) If a nonunanimous stipulation and agreement resolves only issues as to which a party has stated no position and filed no testimony, such party need not join in the nonunanimous stipulation and agreement for it to be considered unanimous and an objection filed by such party shall have no effect.

[(3) A nonunanimous stipulation and agreement shall be filed as a pleading. Each party shall have seven (7) days from the filing of the nonunanimous stipulation and agreement to file a request for a hearing. Failure to file a timely request for hearing shall constitute a full waiver of that party's right to a hearing.]

2. Southwestern Bell supports the Commission's proposed amendments to subsections (A) and (B) of section (1) of Rule 2.115, which apply generally to "Stipulations and Agreements."

3. Southwestern Bell also supports many of the Commission's proposed amendments to section 2 of Rule 2.115, entitled "Nonunanimous Stipulations and Agreements." Southwestern Bell supports the Commission's proposed amendments to subsections (A), (C) and (D) of section (2) of the rule. Southwestern Bell also supports the Commission's proposed amendments to subsection (B) of section (2) of the rule, with the exception of the final sentence of that subsection, as proposed by the Commission, which provides "[A] conditional assent to a nonunanimous stipulation and agreement shall be regarded as a non-conditional assent and not as an objection." Finally, Southwestern Bell opposes the Commission's proposed subsection (E) of section (2) of the rule.

4. With respect to the final sentence of subsection (B) of section (2) of the Commission's proposed amendments to Rule 2.115, Southwestern Bell does not believe it is appropriate for the Commission, by rule, to permit a party to file a "conditional assent" and then relabel this pleading an "unconditional assent." In addition to being confusing, the Commission's proposed amendment will likely lead to parties stating all of their positions with respect to a stipulation and agreement in the form of objections, resulting in the need for more hearings, not less. This proposed language is simply not necessary for the efficient use of stipulations and agreements before the Commission, and should be deleted from the proposed amendments to Rule 2.115.

5. Southwestern Bell also opposes the Commission's proposed subsection (E) of section (2) of Rule 2.115. The Commission's proposed amendment to subsection (E) provides as follows:

(E) If a nonunanimous stipulation and agreement resolves only issues as to **which a party has stated no position and filed no testimony, such party** need not join in the nonunanimous stipulation and agreement for it to be considered unanimous and an objection filed by such party shall have no effect.

Southwestern Bell is concerned that this proposed amendment has the potential to deprive parties to a particular case of their right to due process and a fair hearing. Stipulations and agreements may be filed before parties file testimony or finalize their position in a case. A party to a case should not be foreclosed from objecting to a stipulation and agreement, simply because the stipulation and agreement "resolves only issues as to which a party has stated no position and filed no testimony," as proposed by the Commission. If a party has sought and been granted intervention as a party in a particular case, the Commission's rules should not provide that an objection to a stipulation and agreement filed by other parties "shall have no effect." The

amendment of section (2) of Rule 2.115, to include subsection (E) as proposed by the Commission and described herein should be withdrawn by the Commission.

WHEREFORE, for the reasons described above, Southwestern Bell respectfully requests that the Commission adopt an amended Rule 2.115 as proposed by the Commission, but with the modifications to sections (2)(B) and (E) described herein.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

By: Anthony K. Conroy tm
PAUL G. LANE #27011
LEO J. BUB #34326
ANTHONY K. CONROY #35199
MIMI B. MACDONALD #37606

Attorneys for Southwestern Bell Telephone, L.P.

One SBC Center, Room 3516

St. Louis, Missouri 63101

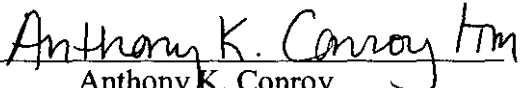
314-235-6060 (Telephone)

314-247-0014 (Facsimile)

anthony.conroy@sbc.com

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via hand-delivery on May 31, 2002.


Anthony K. Conroy

DAN JOYCE
MISSOURI PUBLIC SERVICE COMMISSION
PO BOX 360
JEFFERSON CITY, MO 65102

MICHAEL F. DANDINO
OFFICE OF THE PUBLIC COUNSEL
PO BOX 7800
JEFFERSON CITY, MO 65102