

the moving party is therefore “entitled to relief as a matter of law as to all or any part of the contested case.”⁵ The legal standard contained in the Commission’s proposed summary disposition rule is the same legal standard contained in Rule 74.04(c)(3) of the Missouri Rules of Civil Procedure, and in Rule 56(c) of the Federal Rules of Civil Procedure, both of which are applicable to all civil actions in state and federal courts.⁶ The applicability of the Commission’s summary determination rule should not be limited to a subset of contested Commission cases. Rather, as in Missouri and federal courts, summary determination should be available to a moving party in all contested cases where the motion and supporting documents establish that there is no genuine issue as to any material fact.

3. OPC’s concerns regarding sufficient time to conduct discovery prior to responding to a motion for summary determination in more complex cases are already addressed in the Commission’s proposed rule. Pursuant to subsection (1)(D) of the Commission’s proposed summary disposition rule, the Commission has discretion to “continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.”⁷ Thus, in an appropriate case, the Commission can permit a party additional time to respond to a motion for summary determination if further discovery is necessary and has not yet been completed. The mere fact that the Commission’s proposed summary disposition rule would permit the Commission to dispose of contested cases prior to hearing where the moving party establishes that there is no genuine issue as to any material fact and is entitled to relief as a matter of law does not warrant limiting the applicability of the proposed rule to only certain types of cases, as

⁵ See, Proposed Rule 2.117(1)(E).

⁶ See, Rule 41.01; Fed. R.Civ.P. 56.

⁷ See, Proposed Rule 2.117(1)(D).

proposed by OPC.

WHEREFORE, Southwestern Bell respectfully requests that the Commission adopt a summary disposition rule which is applicable to all contested cases, with the modifications described in Southwestern Bell's Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via hand-delivery on June 7, 2002.



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