Leo J. Bub
Senior Counsel

Southwestern Bell Telephone
One Bell Center
Room 3518
St. Louis, Missouri 63101
Phone 314 235-2508
Fax 314 247-0014

Southwestern Bell

November 1, 1999

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Missouri Public
Service Commission

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

Re: Case Nos. AX-2000-112

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Comments.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Leo J. Bub/tm

Leo J. Bub

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Proposed Rule 4 CSR 240-2.010(2) Practice and Procedure - Definitions.	)))	Case No. AX-2000-108
In the Matter of the Proposed Rule 4 CSR 240-2.050 Practice and Procedure - Computation of Effective Dates.	)))	Case No. AX-2000-111
In the Matter of the Proposed Rule 4 CSR 240-2.060 Practice and Procedure - Applications.	)))	Case No. AX-2000-112
In the Matter of the Proposed Rule 4 CSR 240-2.065 Practice and Procedure - Tariff Filings Which Create Cases.	)))	Case No. AX-2000-113
In the Matter of the Proposed Rule 4 CSR 240-2.080 Practice and Procedure - Pleadings, Filing and Service.	)))	Case No. AX-2000-116
In the Matter of the Proposed Rule 4 CSR 240-2.110 Practice and Procedure - Hearings.	)))	Case No. AX-2000-120
In the Matter of the Proposed Rule 4 CSR 240-2.115 Practice and Procedure - Nonunanimous Stipulations and Agreements.	))))	Case No. AX-2000-121

SOUTHWESTERN BELL TELEPHONE COMPANY'S
COMMENTS

Southwestern Bell Telephone Company, pursuant to the Missouri Public Service Commission's October 1, 1999 Notice[1], respectfully submits the following comments on the new Practice and Procedure Rules (to be codified at 4 CSR 240.101 et seq.) proposed by the Commission:

[1]Missouri Register, Vol. 24, No. 19 (October 1, 1999) at pp. 2,318 – 2,340.

1. 4 CSR Section 240-2.010(2). This proposed rule adds a definition for "certificate of service." It defines "certificate of service" to mean a "document showing the caption of the case, the name of the party served, the date and manner of service, and the signature of the serving party or attorney." During the round table meeting the Regulatory Law Judges hosted on the proposed new Practice and Procedure Rules, a concern was raised about whether this section's defining "certificate of service" as a "document" would require parties to create a separate document for a pleading's certificate of service. The consensus of the parties present was that the certificate of service should be permitted to remain part of the pleading. Southwestern Bell respectfully requests the Commission to clarify in the final rule, or in its discussion of the rule, that as long as the certificate of service contains the information required by the new definition, the certificate could be incorporated into a pleading (e.g., at the end of the pleading as is customarily done today).

2. 4 CSR Section 240-2.010(13). This proposed rule makes minor revisions to the current definition of a "pleading." During the round table meeting, there was a suggestion that this definition should be made to encompass Staff recommendations provided to the Commission. There is much merit to this suggestion. Under both the current and proposed definitions, Staff is considered a "party" in proceedings before the Commission. And Staff routinely files recommendations with the Commission objecting to a company's tariff filings or requesting their suspension. When another party wishes to object to or request suspension of a tariff, it must, under 4 CSR Section 240.065(3), do so through a "pleading." And, under the new proposed version of 4 CSR Section 240.065(3), it must serve it on the company that filed the tariff. There do not appear to be any similar requirements pertaining to Staff when it, in effect, is doing exactly the same thing. Staff recommendations to the Commission should, consistent with

due process and fundamental fairness, be provided to other parties, just like a pleading or other filings made with Commission. Doing so would give interested parties notice of and an opportunity to respond to the recommendation. By specifically incorporating Staff recommendations into the definition of "pleading," Staff recommendations will become subject to 4 CSR 240-2.080 which would require Staff to serve recommendations on other parties to a case and give other parties a specified period to file a response. Southwestern Bell respectfully requests the Commission to add "Staff recommendation" to the enumerated documents considered a "pleading" in Section 2.101(3) or at least clarify in its discussion of the final rule that it considers Staff recommendations to be "pleadings."

3. 4 CSR Section 240-2.050. This proposed rule describes how periods of time prescribed by the Commission are to be computed. Subsection (2) of the current version of the rule provides an exception in such computations for periods of time less than seven days. In such cases, Saturdays, Sundays or legal holidays falling within the period are excluded from the computation and the period is extended accordingly. The new rule eliminates this exception. Southwestern Bell believes that eliminating this exception will unduly shorten the time for a party to perform the required act (e.g., prepare and submit a responsive filing). As it is, parties routinely lose two to four days due to delay in mail delivery. In some cases, the delay has been five to seven days. Eliminating the current computational exception in Section 2.050(2) could cause a party to lose most (and in some cases all) of its time to prepare and file a responsive pleading. Southwestern Bell respectfully requests that the Commission retain Subsection (2) of the current Rule 2.050.

4. 4 CSR Section 240-2.060. New Subsection (1)(K) of this proposed rule requires all applications filed with the Commission to contain a "statement indicating whether the applicant has any pending or final judgments or decisions against it from any state or federal agency or court which involve customer service or rates." Currently, only applications to sell, assign, lease, or transfer assets; or for authority to merge or consolidate must contain this information. Imposing a requirement to provide this additional information on all applications is over broad. And given the burden it would create for applicants, it is not justified. For example, such information would have no relevance to a company's application for a routine variance or waiver from a Commission rule or tariff provision. Similarly, there is no need for the provision of such information when a company merely applies for authority to issue stock, bonds, notes or indebtedness. Rather than impose a blanket requirement to provide this information on all applications, Southwestern Bell respectfully requests the Commission only impose such a requirement where it has specific relevance to the application being sought (e.g., only on applications to sell, assign, lease, or transfer assets; or for authority to merge or consolidate).

5. 4 CSR Section 240-2.065. The proposed Subsection 2.065(1) provides that when "a public utility submits a tariff which constitutes a general rate increase request, the Commission shall establish a case file for the tariff." This requirement should not apply to price cap regulated companies. Already, the Commission at 4 CSR Section 240-10.070(2)(A) has created an exception for increases within a previously approved rate band for a transitionally competitive or competitive service pursuant to Section 392.500 and 392.510 RSMo. (1994). Such increases are not considered a "general rate increase" and are not subject to the minimum filing requirements for general rate increase requests. Similarly, the Commission should define

"general rate increase request" to exclude tariff filings made by price cap companies raising the maximum allowable rate as permitted under Section 392.245 RSMo (1998 Supp).

6. 4 CSR Section 240-2.080. The proposed Subsection 2.080(16) shortens the time to respond to pleadings from ten days to seven days. Southwestern Bell opposes this proposal. This more limited period will materially impair parties' ability to prepare and file responsive pleadings. Due to common delays in mail delivery, parties routinely lose two to four days of the currently allotted response time (ten days). In some cases five to seven days have been lost. Shortening that period to seven days would, in many cases, leave a party with three workdays or less. Southwestern Bell respectfully requests the Commission not to shorten the customary response time. Alternatively, if the Commission wishes to shorten that period, it should grant parties an additional three days where service of the pleading to which they are responding is served by mail, similar to the State and Federal procedural rules. (See, Rule 44(e) of the Missouri Rules of Civil Procedure; and Rule 6(e) of Federal Rules of Civil Procedure).[2] And to better accommodate a shortened response time, Southwestern Bell would suggest the Commission consider adding a provision permitting service by facsimile with a follow-up telephone call to confirm receipt.

7. 4 CSR Section 240-2.110. Subsection 2.110 of this proposed rule shortens the time to submit corrections to the hearing transcript in a case from ten days after the transcript is filed to seven days after the transcript is filed. In addition, it also shortens the time to make objections to proposed corrections from ten days after the filing of suggestions to seven days

[2] Both Missouri Rule 44.01(e) and Rule 6(e) of the FRCP state:

> Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

after the filing of suggestions. Due to common delays in mail delivery, parties routinely lose two to four days (and sometimes more) of the currently allotted time to submit corrections or objections to proposed corrections. Shortening those periods to seven days would, in many cases, leave the party with three or less workdays in which to review a transcript and file corrections or to prepare objections to proposed corrections. Shortening these periods in this manner will materially impair parties' ability to adequately review the record and prepare necessary filings. Southwestern Bell respectfully requests the Commission not to shorten the customary ten day periods to file proposed corrections to the record or to file objections to proposed corrections.

8. 4 CSR Section 240-2.115(3). Subsection 2.115(3) changes the time a party has to file a request for a hearing on a nonunanimous stipulation and agreement from five days from the receipt of the notice to seven days from the filing of the nonunanimous stipulation and agreement. While this proposed rule appears to enlarge the time to file a request for hearing, by changing the point from which the time begins to run (i.e., from "receipt" to "filing"), parties may actually have less time to file a request for a hearing. Due to common delays in mail delivery, parties routinely lose two to four days (and sometimes more) of their currently allotted response times. Providing a party only seven days from filing of a nonunanimous stipulation would, in many case, leave a party with three or less workdays to review the agreement and file a request for hearing. This period is too short. Southwestern Bell would respectfully request the Commission to either enlarge the time to ten days from "filing" or to leave the currently provided period as is (i.e., five days from receipt).

WHEREFORE, Southwestern Bell respectfully requests the Commission to accept these Comments and modify the proposed rules as suggested in these Comments.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY Leo J. Bub HM

PAUL G. LANE #27011
LEO J. BUB #34326
ANTHONY K. CONROY #35199
KATHERINE C. SWALLER #34271
Attorneys for Southwestern Bell Telephone Company
One Bell Center, Room 3518
St. Louis, Missouri 63101
314-235-2508 (Telephone)
314-247-0014 (Facsimile)

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on October 15, 1999.

Leo J. Bub

DAN JOYCE
MISSOURI PUBLIC SERVICE COMMISSION
301 W. HIGH STREET, SUITE 530
JEFFERSON CITY, MO 65101

MICHAEL F. DANDINO
OFFICE OF THE PUBLIC COUNSEL
301 W. HIGH STREET, SUITE 250
JEFFERSON CITY, MO 65101